Feb. 8 & 9. 1-330 Judge Dean

Affirmed 308 331

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 141.

JOHN R. SHEPLEY, CHARLES PARSONS, AND JOHN F. GIBBONS, DEVISEES AND TRUSTEES UNDER THE WILL OF WILLIAM M. McPHERSON, DEC'D, PLAINTIFFS IN ERROR,

vs.

JOHN EPPES COWAN, SAMUEL M. COLEMAN, SAMUEL N. NILES, EDWARD B. HOGAN, MICHAEL CHARTRAND, JOSEPH A. CHARTRAND, FELIX F. CHARTRAND, PASCHAL F. CHARTRAND, AND ANTOINE F. CHARTRAND.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED JANUARY 27, 1874.

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Filed
to write

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1-3 The United States of America to John Eppes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine F. Chartrand, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Missouri, wherein John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees under the will of William M. McPherson, deceased, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Washington Adams, presiding judge of the supreme court of the State of Missouri, this fourteenth day of January, in the year of our Lord one thousand eight hundred and seventy-four.

WASH'N ADAMS,
Presiding Judge Supreme Court of the State of Missouri.

I accept service of a copy of this citation for all the defendants in error except Cowan.

BRITTON A. HILL,
Atty. for said Dfets. in Error.

JAN'Y 17, 1874.

Received copy this 17' Jan'y, 1874.

WHITTELSEY,
Atty. for J. E. Cowan.

Received copy.

T. G. C. DAVIS,
Atty. of Record for Cowan.

4 (Indorsed:) Supreme court State of Missouri. John R. Shepley et al., plffs. in error, vs. John E. Cowan et al., dfts. in error. Citation filed Jan'y 17th, 1874. J. Thornburgh, clerk.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the [SEAL.] supreme court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the March term, 1873, thereof, between John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees under the will of William M. McPherson, deceased, plaintiffs, and John Eppes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine F. Chartrand, defendants, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of

the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court of the United States *Court*, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States *Court* may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, this fourteenth day of January, in the year of our Lord one thousand eight hundred and seventy-four.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S. Eastern Dist. Mo.
By H. C. GEISBERG,
Deputy.

Allowed by

WASH'N ADAMS,
Presiding Judge of the Supreme Court of Missouri.

6 STATE OF MISSOURI, *ss:*

I, Josiah Thornburgh, clerk of the supreme court held at St. Louis, of the State of Missouri, certify that in obedience to the mandate of the within writ I herewith transmit to the honorable Supreme Court of the United States, at Washington, D. C., a full, true, and complete transcript of the record and proceedings in the within-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in the city of St. Louis, this seventeenth day of January, A. D. 1874.

[SEAL.] J. THORNBURGH, *Clerk.*
Per JOS. F. BAIER, *D. C.*

(Indorsed:) United States circuit court eastern district of Missouri. John R. Shepley et al., trustees, &c., vs. John E. Cowan et al. Writ of error in the supreme court of Missouri. Returned and filed January 17th, 1874. J. Thornburgh, clk., per Jos. F. Baier, dep. clerk.

7 STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and seventy-two, there was filed in the clerk's office of the supreme court held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause lately pending in the St. Louis circuit court, which transcript is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the 24th day of January, A. D. 1870, there was filed in the office of the clerk of the circuit court of St. Louis County, in the State of Missouri, a petition in words and figures as follows, to wit:

Petition.

In the circuit court of St. Louis County, Mo. April T., 1870.

WILLIAM M. MCPHERSON, PLAINTIFF,
against
JOHN EPES COWAN, SAMUEL M. COLEMAN, Samuel N. Niles, Edward B. Flogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine F. Chartrand, defendants.

William M. McPherson, the plaintiff, states that an act of Congress of the United States entitled "An act to appropriate the proceeds
8 of the sales of the public lands, and to grant premption rights," approved Sept. 4, 1841, by the eighth section granted to the State of Missouri 500 thousand acres of land for purposes of internal improvement, as will appear by said act; the selections to be made in such manner as the legislature of Missouri should direct. (See 5 vol. United States Stat. at Large, p. 453.)

That by several acts of the legislature of Missouri said grant was accepted and provision made for selecting and disposing of said lands; which acts were approved, respectively, March 13, 1845, Feb'y 2, 1847, Feb'y 13, 1849, and March 10, 1849.

That December 15, 1849, the Hon. Austin A. King, then governor of Missouri, notified the Secretary of the Interior of the United States that the plaintiff had selected, on behalf of the State of Missouri, fractional section (9) nine, township (44) forty-four, range (7) seven east, in the district of lands subject to sale at St. Louis, Mo., which tract of land contained (37.40) thirty-seven and forty hundredths acres; and the said governor of Missouri then and there relinquished to the United States the surplus, and accepted said fractional section in lieu of (320) three hundred and twenty acres, as will appear by Exhibit No. 1, filed herewith.

That said fractional section is situate in St. Louis County, Missouri, and was legally surveyed by the United States and the official plat thereof on file in the office of the register of lands in the proper district on and since the day of April, 1841.

That the selection aforesaid by the plaintiff was approved by proper authority of the United States, as will appear by Exhibits Nos. 1,
9 3, 4, 5, 6, & 7, filed herewith.

That on the 27th of February, 1850, a patent from the State of Missouri regularly issued to the plaintiff, granting him said land, and the same was duly recorded in the recorder's office of St. Louis County, Mo., on the 26th day of March, 1851, as will appear by Exhibit No. 8, filed herewith.

That about the day of , 1847, the plaintiff took possession of said tract of land, and ever since has had actual and exclusive possession thereof.

The plaintiff is advised and believes that his title to said land is valid in law and equity; but the defendants, combining and confederating with intent to injure and harass him, have set up and pretend and claim to have acquired a valid adverse right and title to said land by pre-emption, under laws of the United States, under circumstances which will be now stated: Some time in 1850, the children and heirs at law of Thomas Chartrand, sen., claimed, in right of their father, a pre-

emption on said tract; but in fact neither said Thomas Chartrand, sen., nor his children and heirs, nor any of them, ever had any pre-emption right to any part of said land; but the plaintiff says they made a clamorous assertion of their pretended right to a pre-emption, and from time to time took many ex-parte affidavits and depositions, and prosecuted their pretensions to such pre-emption right before different officials of the Land Department of the United States until the 4th day of June, 1866, when the Hon. James Harlan, Secretary of the Interior, decided that said children and heirs of Thomas Chartrand, sen., were entitled to pre-empt said lands by virtue of the acts of Congress of 1838 and 1840 granting pre-emption rights to settlers on the public lands; and in accordance with said decision the following children and heirs of Thomas Chartrand, sen., viz, Joseph A. Chartrand, Michael Chartrand, Felix T. Chartrand, Antoine T. Chartrand, and Paschal F. Chartrand, paid the purchase-money for said land and received a recorder's receipt therefor; but that Thomas Chartrand, another child and heir of Thomas Chartrand, sen'r, took no part in said purchase, and made no claim to said pretended pre-emption right.

That July 21, 1866, a formal patent was issued from the United States to the heirs of Thomas Chartrand, sen'r, deceased.

That said patent, so issued by the United States, is now set up by the said heirs and children of Thomas Chartrand, sen'r, who are defendants to this petition, and the other defendants who claim under and from them some interest in said land; and said defendants falsely hold forth to the world said patent and pre-emption right as a better title than the title of the plaintiff, and the same is now a cloud on the plaintiff's title, and has very seriously injured the plaintiff's title and the value thereof, and will continue to do so until it is ascertained by a proper judicial decision that it is of no validity, but null and void, as against the plaintiff's title.

That the claimants under said patent, the heirs of Thomas Chartrand, sen'r, continue to assert and pretend that their title is valid and older and better than the plaintiff's title, and have induced many persons to believe that the plaintiff has no title to the said tract of land.

The plaintiff states that the transcript of the record filed herewith (see Exhibit No. 9, of plaintiff's petition) contains all the evidence which was laid before the Land Department of the United States in support of said pretended pre-emption right; and the plaintiff says that the Land Department had no testimony before it to show any right to such pre-emption in Thomas Chartrand, sen., or his heirs, or any of them; and that the said Land Department, in deciding that said claimants were entitled to such pre-emption right, committed gross errors in law and gross errors in fact; that there was no proof that Thomas Chartrand, sen., had complied with any act of Congress granting pre-emption rights to settlers on the public lands; that said Thomas Chartrand, sen., was not, on the 22nd June, 1838, an actual settler in possession and a housekeeper by personal residence on said tract, nor was he such for four months next preceding that day; and said Thomas Chartrand, sen., never made any settlement or improvement on said tract in person or otherwise, and never was a settler on said tract of land or any other public land, having a dwelling on one quarter-section of the public land while cultivating another quarter-section of the public land, and never did so have his dwelling on or so cultivate the land now in suit; that said Thomas Chartrand, sen., never made any improvement and settlement at any time on said tract of land, and never did erect any dwelling-house thereon, or im-

prove said tract, or inhabit the same for the time or in the manner required by law, to secure a right of pre-emption thereto; and said Thomas Chartrand, sen'r, never did make any proof or offer to make any proof of any settlement or improvement on said tract to the register and receiver of the land district in which said tract was situated, or any proof required by law in that behalf; that said Thomas Chartrand, sen., never did file with the register of the proper land district any written statement describing said tract of land as settled on, or declaring his intention to claim said tract by a pre-emption right, or offer to do so, nor make any proof or affidavit in respect to said tract at any time; that said Thomas Chartrand, sen., never did pay any money or offer to pay any money for said tract of land according to any law of the United States; and said Thomas Chartrand, sen., never declared and never performed anything whereby he acquired a right to pre-'mpt said land; that the proceedings of the officers of the Land Department of the United States in the matter of said claim to pre-emption by said Chartrand's heirs were erroneous and illegal and unjust in other respects, in this, that said officers of the Land Department received and considered ex-parte affidavits of the following persons, viz, those of Amable Chartrand, Thomas Watson, John Eppes Cowan, Margaret Houston, and Antoine Motier, which were not only incompetent as being ex parte, but were filled with statements of mere opinions or suspecions of the affiants, and matters of hearsay, and matters
13 otherwise illegal.

And said officers of said Land Department received and considered in behalf of said pre-emption claim the following depositions, so called, taken in 1862, without notice to the plaintiff, viz, those of Antoine Motier, Margaret Houston, Virginia Leffler, Michael Chartrand, and Thomas W. Levant; that said depositions, so called, were liable to the same objections as said ex-parte affidavits, and the deposition of Michael Chartrand (so called) was that of a person interested in the claim and incompetent to testify, and the testimony of Thomas W. Levant related to the contents of a supposed certificate the loss or destruction of which was not shown, and in fact did never exist.

And the said officers of the Land Department received and considered the depositions of the following persons, taken before B. F. Hickman, esq., commissioner of the United States, viz, those of Antoine Motier, Louisa Creely, Virginia Leffler, John Porcelli, Michael Chartrand, Pigeon, and Louis Guion, which depositions were and are wholly insufficient to show any pre-emption right in Thomas Chartrand, sen., to said land in suit.

That the Hon. Secretary of the Interior and other officials, by whose action said heirs of Chartrand, sen., were permitted to pre-empt, pay for, and patent said land, acted in disregard of the plaintiff's rights, and in ignorance of the intent and meaning of the laws of the United States granting pre-emptions to settlers on the public lands,
14 and undertook and assumed to set aside and annul the plaintiff's title, and the prior grant of the land in dispute to the State of Missouri; that the heirs of said Chartrand, sen., their agents and attorneys, imposed on said Secretary of the Interior and other officials of the Land Department by false and illegal testimony as aforesaid, and testimony that was incompetent.

The plaintiff says that the allowance of said pre-emption by said Land Department, and entry of said land by means thereof and the patent thereon, was procured by said defendants by collusion, fraud, misrepresentation, and deceit.

The plaintiff states that on the 10th May, 1862, said Joseph A. Chartrand conveyed to John Epes Cowan, by quit-claim and without warranty, an undivided half of said tract in consideration of one dollar, as will appear by Exhibit No. 10, filed herewith.

That April 24, 1862, said Michael Chartrand and wife, said Felix Chartrand and wife, and said Antoine T. Chartrand conveyed to said John Epes Cowan, by quit-claim, without warranty, an undivided half of said tract in consideration of one dollar, as will appear by Exhibit No. 11, filed herewith.

That February 2, 1863, said Paschal F. Chartrand and wife conveyed to said John Epes Cowan, by quit-claim, without warranty, an undivided half of said tract in consideration of one dollar, as will appear by Exhibit No. 12, filed herewith.

That April 2nd, 1864, said Paschal F. Chartrand and Antoine
15 T. Chartrand, by a witten agreement with said Samuel M. Coleman, employed said Coleman to prosecute their claim to said pre-emption right, and promised to give said Coleman, if successful, one-half of said tract of land, as will appear by Exhibit No. 13, filed herewith.

That November 26, 1866, said Paschal F. Chartrand conveyed to said Coleman, in pursuance to said contract of April 2nd, 1864, as will appear by Exhibit No. 14, filed herewith.

The statement in said last-mentioned conveyance, that the consideration thereof was three thousand dollars, is untrue; no such consideration was paid in whole or in part.

That August 7, 1866, said Joseph A. Chartrand and wife conveyed to said Coleman one-half said tract in consideration of four years' services of said Coleman prosecuting said claim to pre-emption, as will appear by Exhibit No. 15, filed herewith.

That August 1, 1866, said Michael Chartrand and wife and said Joseph Chartrand and *and* Felix Chartrand and wife conveyed to said Coleman one-half of said tract in consideration of four years' services of said Coleman in prosecuting said claim to pre-emption, as will appear by Exhibit No. 16, filed herewith.

The plaintiff states that, notwithstanding said conveyances, the said heirs and children of Thomas Chartrand, sen., who are defendants to this suit, (with the exception of Thomas Chartrand, jun., who relinquished to the plaintiff,) claim an interest in said tract and deny the right of the plaintiff.

16 That November 19, 1866, said Coleman conveyed to said Samuel N. Niles a lot in said tract of land, being (50) fifty feet on the west line of the Carondelet road by (150) one hundred and fifty feet deep, and bounded south by the south line of the tract, as will appear by Exhibit No. 17, filed herewith.

The consideration of (1,500) fifteen hundred dollars named in said last-mentioned deed was not paid in whole or part.

That November 26, 1866, said Coleman conveyed to said Edward B. Flogan the south half of said tract, except the lot of 50 by 150 feet aforesaid conveyed to said Niles for a consideration recited therein of (2,000) two thousand dollars, as will appear by Exhibit No. 13, filed herewith. That the consideration named in said last-mentioned deed was not paid n whole or part.

That at and before the times respectively when said Cowan, Niles, Coleman, and Hogan received each of said conveyances, and at and before the times respectively when said persons each acquired any interest

or claim to said tract or part thereof, each of said persons had full notice of all the facts mentioned in this petition.

That each of said defendants took whatever interest he acquired after the emanation of the plaintiff's patent, and after notice to each defendant; and no one of said defendants paid anything for his conveyances or any one of them.

Said Coleman, Hogan, and Niles are non-residents of the State of Missouri.

17 The plaintiff prays that a decree may be rendered vesting in him all title, real or pretended, which is held by said defendants and each of them, and for general relief in the premises.

GLOVER AND SHEPLEY,
For Plaintiff.

STATE OF MISSOURI,
County of St. Louis, ss:

William M. McPherson, the plaintiff in the foregoing petition, on his oath states that he verily believes that Samuel M. Coleman, Edward B. Flogan, and Samuel N. Niles, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. T. Chartrand, defendants therein, are non-residents of the State of Missouri, so that the ordinary process of law cannot be served upon them.

WM. M. McPHERSON.

ST. LOUIS COUNTY,
State of Missouri, ss:

Sworn to and subscribed before me, the undersigned notary public, this 24th day of January, 1870.

[SEAL.] JOSEPH N. LITTON,
Notary Public.

18 And subsequently, to wit, on the 16th day of May, 1870, there was filed in said cause the separate answer of John Epes Cowan, which answer is in the words and figures following, to wit:

Separate answer of deft. Cowan.

The defendant, John Epes Cowan, for his separate answer to the plaintiff's petition and the matters and things therein stated, says it is true that an act of Congress was passed and approved with the title as quoted by the plaintiff in his petition. It is also true that acts of the legislature of the State of Missouri were passed for the purpose stated by the plaintiff, and that Austin A. King, then governor of the State of Missouri, gave the notice to the Secretary of the Interior that the plaintiff had selected, on behalf of the State, fractional section nine, township forty-four, range seven east, containing thirty-seven forty one-hundredths acres, and that the said governor relinquished the surplus and accepted said fractional section, as stated by the plaintiff, and that the same is situated in St. Louis County. He also admits the survey and plat as stated. It is true that the selection made by the plaintiff was approved by the proper authority of the United States, as alleged, subject, however, to the right of pre-emption of all person' who had at the time rights of pre-emption on the lands so selected by the plaintiff.

The defendant has been informed, and believes it is true, that on or about the 27 day of February, 1850, a patent from the State of Missouri

for the said fractional section of land was issued, and that the same was recorded as stated by the plaintiff.

19 But this defendant denies that the plaintiff took possession at the time and has ever since held actual and exclusive possession of said land, as stated in his petition; denies that plaintiff has been informed and believes that his title to said land is valid in law and equity. He also denies all combination and confederation with others with intent to injure and harass the plaintiff by setting up a pretended title to said land; but, on the contrary thereof, this defendant avers that he has a good and valid title in law and equity to a large part of said fractional section of land, to wit, the undivided one-half of said fractional section, as will appear by reference to deeds of conveyance made by the heirs at law of the said Thomas Chartrand, sen'r, to this defendant, and marked with the letters A, B, and C, herewith filed as a part of this answer, being the same deeds to which reference is by the plaintiff, in his petition, made.

This defendant says that Thomas Chartrand, sen., had in his life-time a valid, legal, and equitable claim and right to pre-empt the said fractional section of land, having purchased an improvement on the said land in 1830, and occupied and lived on the same as early as the year of 1834, and having his actual residence thereon in 1835, and continued to hold and occupy the same until he died, in 1845; that the said Thomas Chartrand, sen., made application in due form of law for a pre-emption of said land in his life-time, and when he had a right of pre-emption thereto; but the officers to whom he made application to secure and pre-empt the same would not allow him to make good his claim, as he was able and offered to do, by proving his right to a pre-emption

20 on the said fractional section under and by virtue of the laws of the United States; that after the death of the said Thomas Chartrand, sen., his children and heirs at law continued to prosecute in legal and proper form their right as heirs at law of said Chartrand, sen., to a pre-emption on the said fractional section of land before different officials of the Land Department of the United States, until the Hon. James Harlan, Secretary of the Interior, on the 4th day of June, 1866, affirmed the decision of the proper United States land-officers in and for the State of Missouri, which decision had been previously made by the proper land-officers in and for the State of Missouri upon full proof of the right of Thomas Chartrand, sen., and of his heirs at law to pre-empt the said land; which decision and the affirmance thereof by said James Harlan, Sec'y of the Interior, determined and settled the question of the right to pre-empt the said land by virtue of the act of Congress in such cases made and provided; and that the patent granted by the Government of the United States to the said heirs after the making of the said decision was regularly and legally granted, and was not procured by any fraud or false testimony, nor was the decision in favor of said heirs or its affirmance as hereinbefore stated erroneously or fraudulently made.

And this defendant further says that the conveyances hereinbefore stated as made by the heirs at law of the said Thomas Chartrand, sen., of the one undivided half of the said land to him were made for good and valuable considerations in money and services paid and rendered by this defendant to the said heirs, and in prosecuting the said pre-

21 emption to the final decision and procuring the patent therefor, behaving the sole control and management of the said pre-emption right after the death of the said Thomas Chartrand, sen., in all the steps taken therein; of all which the plaintiff and the defendant Cole

man had full notice before the time of the inception of their pretended claims or titles.

This defendant prays this hon. court, upon a full hearing of the cause, and satisfactory evidence of the allegations contained in this his separate answer, to order, adjudge, and decree the undivided one-half of the said land to be the right and property of this defendant and for possession.

JOHN EPES COWAN,
By T. G. C. DAVIS, *Sol. & Atty.*

And subsequently, to wit, June 17, 1870, there was filed in the said cause the answer of all the defendants except Cowan, which answer is in the words and figures following, to wit:

Answer of all defendants except Cowan.

The defendants, except Cowan, answering, deny that the said fractional section nine, township 44, range 7 east, in the district of lands subject to sale at St. Louis, Mo., was granted to the State of Missouri by the 8th section of the act of Sept., 4, 1841, as averred in the petition. Defendants deny that said fractional section nine could, by the terms of the several acts referred, be relinquished by the governor of the State to the plaintiff; and defendants deny that said gov-
22 ernor had the power under the law to relinquish the surplus of 300 acres and accept said fractional section nine in lieu thereof; and defendants deny that said plaintiffs had any right or power under the law to select said fractional section nine on behalf of the State of Missouri, nor had the said governor any power or authority to notify the Secretary of the Interior of the United States that plaintiff had made said selection on behalf of this State; and defendants aver that all and each of said proceedings set forth by plaintiff for the selection, location, and patenting of said fractional section nine to the plaintiff were and are illegal, fraudulent, and void, and conferred no title on the plaintiff. And the defendants aver that said patent was issued in violation of law and is void. And defendants further aver that said fractional section nine was not and is not subject to the said location of plaintiff, and that it was and is subject to defendants' (the Chartrands) location and patent under their pre-emption, as set forth in plaintiff's petition.

Defendants deny that plaintiff took possession of said tract of land in 1847, as stated in the petition, and defendants deny that said plaintiff has had and held actual and exclusive possession thereof ever since 1847.

Defendants say Thomas Chartrand, jr., waived his interest in said pre-emption in favor of his brothers and sisters.

Defendants deny that said patent and pre-emption right to the Chartrands are void, and aver that they are valid and effectual to pass title to them in 1866.

Defendants aver that by the decision of the Land Department of the United States it was decided correctly upon said pre-emption
23 claim of Thomas Chartrand, sen., and said pre-emption claim being older than said fraudulent location of plaintiff, it must prevail in law and equity against plaintiff's pretended location.

Defendants aver that the final decision of the Secretary of the Interior on Chartrand's pre-emption is conclusive of its validity and of its correctness, and is binding and conclusive upon the plaintiff and the defendants.

Defendants aver that said plaintiff opposed the granting of said pre-emption to Chartrand before the said Land Department of the U. States,

and caused briefs and arguments to be filed by Thomas Ewing, jr., and others; and the said decision in favor of the pre-emption of said Chartrand is an estoppel upon and binding on the plaintiff, and invalidates the plaintiff's selection under the 8th section of said act of 1841.

Defendants aver that Thomas Chartrand, sen., was, on the 22nd June, 1838, an actual settler in possession, and a housekeeper by personal residence, on said tract, and for four months preceding that day; and said Chartrand, sen., did make a settlement and improvement on said tract, as stated in his affidavit before said register and receiver; and the decision of said register and receiver *are* conclusive in favor of said pre-emption, and binding on plaintiff and all others claiming under the United States; and said Chartrand, sen., had a dwelling on a quarter-section, and cultivated as required by the act; and he did have his dwelling on and did cultivate the land in suit, and did make improvements and settlements, and did erect a dwelling-house thereon and improve said tract and inhabit the same as required by law; and the granting of said pre-emption is conclusive proof thereof, and the
24 patent is record-evidence of the preliminary steps being correct. Defendants aver that Thomas Chartrand, sen., did perform all the acts necessary to obtain a pre-emption in said land, paid all moneys therefor, and the patent on the pre-emption is conclusive proof thereof.

Defendants deny that the officers of the Land Department of the United States, in the matter of said claim to pre-emption by said Chartrand's heirs, proceeded illegally, erroneously, or unjustly, or that they received or considered ex-parte, incompetent, insufficient, or illegal proofs or affidavits of any person or persons whomsoever, or that the allowance of said pre-emption by said Land Department and entry of said land and the patent thereon was procured by said defendants by fraud, collusion, misrepresentation, or deceit, as by said plaintiff alleged.

Defendants further state that all the conveyances of said land, or any portion thereof, made by said defendants were made in good faith and for value received.

Defendants deny that when said defendants Cowan, Niles, Coleman, and Flogan acquired their respective interests or claim to said tract, or parts thereof, they or either of them had full notice or any notice of the facts mentioned in said plaintiff's petition as by him alleged.

Defendants deny that the officers of the Land Department received or considered ex-parte affidavits of Amable Chartrand, John Epes Cowan, Thomas Watson, Margaret Houston, and Antoine Motier; or that said alleged affidavits were incomplete, or were in any other matter or form illegal as by said plaintiff alleged; or that said officers
25 received or considered on behalf of said pre-emption claim the depositions of Antoine Motier, Margaret Houston, Virginia Leffler, Michael Chartrand, or Thomas W. Levant without notice, or that the same were liable to any objection; or that any of said witnesses were incompetent to testify; or that the testimony of said Levant was in any respect irrelevant or incompetent; or that said officers received or considered the depositions of Antoine Motier, Virginia Leffler, Michael Chartrand, Louisa Creely, John Porcelli, Pigoon, and Louis Guion were insufficient, as by said plaintiff alleged; or that the Secretary of the Interior, or other officers, acted in disregard of the plaintiff's rights or in ignorance of the intent and meaning of the laws of the United States; or that they undertook and assumed to set aside and annul the plaintiff's title or the prior grant of the land to the State of Missouri; or that the defendants, or either of them, their

agents or attorneys, imposed upon said Secretary or the officers of the Land Department by false and illegal testimony, or testimony that was incomplete, as by said plaintiff alleged.

Wherefore defendants pray for judgment in this behalf.

B. A. HILL & A. M. GARDNER,
Attys. for Defts., except Cowan.

26 And subsequently, to wit, on the 7th day of March, 1871, there was filed in said cause plaintiff's replication to answer of Cowan, which replication is in the words and figures following, to wit:

Replication to Cowan's answer.

The plaintiff, Wm. M. McPherson, for replication to the answer of John Epes Cowan in this cause, states: He denies that said defendant Cowan had or has any title as by him stated. He denies that said Thomas Chartrand, sen., had any valid right or claim to a pre-emption to said tract of land, or purchased or improved same in 1830, or occupied or lived on same in 1834, or had any actual residence thereon any time, or made any application for a pre-emption to said land, or that the officers would not allow the same, or permit him to make good or prove his claim, or that he was willing or able to do, or that the children of said Thomas Chartrand, sen., had any legal right to pre-emption to said land, or that legal proof was ever made at any time or anywhere of any right in said Chartrand, sen., or his heirs to a pre-emption thereof.

The plaintiff denies that the patent granted by the State of Missouri for said land was fraudulent or void. And the plaintiff denies that the deeds mentioned in the answer of said Cowan as made to him, or any of them, was made for a valuable or good consideration.

GLOVER AND SHEPLEY,
For McPherson, the Pltf.

27 And on the same day, to wit, March 7th, 1871, there was filed in said cause plaintiff's replication to answer of all defendants except Cowan, which replication is in the words and figures following, to wit:

Plaintiff's replication to answer of all defts. save Cowan.

And for replication to the answer of the defendants, Samuel M. Coleman, Samuel V. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal T. Chartrand, and Antoine T. Chartrand, in this cause, June 17, 1870, the plaintiff states that the said fractional nine, (9,) T. (44) forty-four, R. (7) seven, was granted to the State of Missouri by said act of Congress Sept. 4, 1841, and the plaintiff denies that the relinquishment of said tract by the governor of Missouri, and the surplus thereof, and his notification and the selection of said fractional section by said governor, and the location thereof, and the patent therefor from the State, or any one of said acts, matters, or things, was fraudulent or void, or that any fraud or bad faith attached on any of said acts.

The plaintiff states that Thomas Chartrand, jun., did not waive his interest in behalf of his brothers and sisters, and deny he had any interest therein.

The plaintiff denies that Thomas Chartrand, sen., was, June 22, 1838, or any time, an actual settler on said land, or in possession thereof or any

part thereof, or for four months preceding June 22, 1838, or made a settlement or improvement thereon, or that the decision of the register and receiver, or the decision of the Land Department, or any officer
28 thereof, set out in said answer, was or is conclusive of anything in this cause; or that said Thomas Chartrand, senr., had a dwelling on any quarter-section, or cultivated same, as required by law, or improved or inhabited the same, or performed any act required by law to give him a pre-emption right to said tract.

GLOVER AND SHEPLEY,
For McPherson, the Pltff.

Special term.—Order decree for plaintiff.

And at special terms of said court, being at the October and December terms, A. D. 1871, the following proceedings were had in said cause, to wit:

MONDAY, *November 13th*, 1871.—Now, at this day, came the plaintiff and the defendants to the above-entitled cause by their respective counsel, and this cause having been heretofore submitted to the court upon the pleadings and testimony, oral and written, and the court having fully considered the same, now here finds the issue in the cause for the plaintiff. And it is ordered, adjudged, and decreed that the plaintiff is entitled to the relief prayed by his petition; and that all the right, title, interest, or claim of said defendants, or either of them, to the land in controversy derived by or through the said patent to the heirs of Thomas Chartrand, sen., or by means of any other matter or thing set forth in the pleadings herein, be, and the same is hereby, vested in the plaintiff, to have and to hold to him, his heirs and assigns, now and forever. It is further considered by the court that said plaintiff recover of said defendants his costs and charges herein expended, and have execution therefor.

29 *Special term.—Order overruling motions for new trial.*

SATURDAY, *December* 16, 1871.—The court having duly heard and considered the motions herein filed on the part of said defendants for a new trial of the cause, and being thereof duly advised, doth order that said motions be overruled.

Special term.—Order allowing appeal to gen'l term.

TUESDAY, *December* 19, 1871.—Now, at this day, come the said defendants by their attorneys, and, on their motion, it is ordered by the court that an appeal be allowed said defendants to the general term of this court from the decision herein rendered.

Bill of exceptions.

In the circuit court, county of St. Louis, State of Missouri. Room No. 2.

WM. M. MCPHERSON, PLAINTIFF,
vs.
JOHN EPES COWAN, SAMUEL M. COLEMAN, Samuel V. Niles, Edward B. Hogan, Michael C. Chartrand, Joseph H. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine Chartrand, defendants.

Be it remembered that on the trial of this cause and the hearing be-

fore the court the following evidence and testimony were given by the parties before the court, and the following exceptions and proceedings were had on the part of all the said defendants:

The plaintiff, to maintain his petition in equity in this case, offered in evidence the following documents and papers, to wit: Bundle A,
30 containing exhibits numbered 1, 3, 4, 5, & 6, & also exhibits of the petition 7 & 8, as follows:

GENERAL LAND-OFFICE,
January 23, 1867.

I, Joseph S. Wilson, Commissioner of the General Land-Office, do hereby certify that the annexed copies are true and literal exemplifications from the files and records of this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

{ GENERAL LAND-OFFICE } { SEAL, UNITED STATES. }

JOS. S. WILSON,
Commissioner of the General Land-Office.

Exhibit No. 1 *of plff.'s petition.—Letter Gov. King to Sec'y Treasury.—Notice of selection.*

EXECUTIVE DEPARTMENT,
City of Jefferson, Mo., Dec. 15, 1849.

To the hon'l the Secretary of the Treasury:

SIR: In accordance with the provisions of an act of the Missouri legislature entitled "An act to authorize the governor to dispose of lands granted to the State of Missouri by an act of Congress approved
31 Sept. 4, 1841, which have not been selected, approved March 10, 1849," I have the honor to report to you that William M. McPherson has selected, on behalf of the State of Missouri, fractional section nine, in township forty-four north, range seven east, in the district of lands subject to sale at St. Louis.

Said fractional section contains (37.40 acres) thirty-seven and forty-hundredths acres.

By virtue of the law aforesaid, as governor of the State of Missouri, I do hereby relinquish to the United States the surplus, and accept said fractional section instead of three hundred and twenty acres.

The approval of said selection by the Secretary of the Treasury is respectfully requested.

I have the honor to be, very respectfully,

AUSTIN A. KING.

[Endorsed:] DEPARTMENT OF THE INTERIOR,
January 17, 1850.

The selection of the tract described within is approved, subject to any right which may have existed at the time the same was made known to the land-officers by the agent of the State.

T. EWING,
Secretary.

(Here follows map marked page 32.)

33 *Exhibit No. 3 of pl'tff's petition.—Letter Com's'r Genl. Land-Office to Thos. Ewing, Sec'y of Int.*

GENERAL LAND-OFFICE,
January 16, 1850.

Hon. THOMAS EWING,
Sec'y of the Interior:

SIR: I have the honor to enclose a letter from his excellency Austin A. King, gov. of the State of Missouri, stating that William M. McPherson has selected, in behalf of that State, under the 8th section of the act of Congress approved Sept. 4, 1841, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," fractional section nine, in township forty-four north, of range seven east of the fifth principal meridian, containing 37.40 acres, "and relinquishing to the United States the surplus, and accepting said fractional section instead of 320 acres," as authorized by an act of the legislature of the State of Missouri, approved March 10, 1849, a copy of which is herewith enclosed.

It appears from the plat on file, and from the other records of this Office, that fractional section 9, T. 44 N., of R. 7 E., is vacant public land, subject to selection by the State of Missouri under the above-named act of Sept. 4, 1841.

The selection is therefore submitted for your consideration, and may in my opinion be approved, subject to any right which may have existed at the date of the selection.

I am, sir, very respectfully, your ob'd't serv't,
J. BUTTERFIELD, *Commissioner.*

34 *Exhibit No. 4 of pl'tf's petition.—Letter Sec'y of Int. to Com. Gen'l Land-Office.*

DEPARTMENT OF THE INTERIOR,
Washington, January 17, 1850.

SIR: I herewith return the papers submitted with your letter of the 16th instant, evidencing the selection by the State of Missouri, under the act of Sept. 4, 1841, of the fractional section 9, in township 44 north, of range 7 east, St. Louis, Mo., district, with my approval endorsed thereon.

I am, sir, very respectfully, your ob'd't se'v't,
T. EWING, *Secy.*

The Commissioner of the General Land-Office.

Exhibit No. 5 of pl'tf's petition.

GENERAL LAND-OFFICE,
January 18, 1850.

His excellency AUSTIN A. KING,
Governor of the State of Missouri:

SIR: I have the honor to inform you that the selection of fractional section 9, in township 44 north, of range 7 east of the fifth principal meridian, containing 37.40 acres, by the State of Missouri, through her duly authorized agent, William M. McPherson, under the 8th section of the act of Congress approved Sept. 4, 1841, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emp-

35 tion rights," has been approved by the Secretary of the Interior for three hundred and twenty acres, subject to any rights that may have existed at the date when the selection was reported to the Land-Office.

I am, sir, very respectfully, your ob'd't servant,

J. BUTTERFIELD,
Commissioner.

Exhibit No. 6, of pl'tf's petition.—Letter Com'r Gen'l Land-Office to W. M. McPherson.

GENERAL LAND-OFFICE,
June 26th, 1855.

W. M. MCPHERSON, *St. Louis, Mo.:*

SIR: In compliance with your request, I herewith enclose a certificate, under seal of office, certifying to the fact that fractional section nine, in township forty-four north, of range seven east of 5th principal meridian, was selected by the State of Missouri, under the 8th section of the act of Congress approved 4' September, 1841, and has been approved to said State.

Very respectfully, your ob'd't serv't.

JOHN WILSON,
Commissioner.

P. S.—Copies of the Secretary's decision in the Carondelet case are being prepared, and will be transmitted to you as soon as practicable.

J. W., *Com's'r.*

36 *Circular to registers U. S. land-offices, dated Feb. 21, '46.*

Circular to registers of United States land-offices.

GENERAL LAND-OFFICE,
February 21st, 1846.

SIR: To simplify the mode of proceeding in making State selections under the 8th section of the act of Congress, 4th September, 1841, and to enable the State to close up this intricate business as soon as possible, I have deemed it expedient to adopt the following regulations:

1st. That if the State selects a tract of land which contains 320 acres, the compact parcel required by law, and on examination by this Office it is ascertained that a portion of it is interfered with by a valid claim, the residue will be approved, notwithstanding it may contain less than 320 acres after the rejection of the part interfered with, because in the first instance the law was complied with.

2nd. If the State selects a tract of land covered at the time by the declaratory statement of a pre-emption, that fact does not invalidate the selection, if, at the expiration of the time allowed by law, the pre-emption claimant fails to establish his claim.

3rd. When selections reported to this Office are found to conflict with the declaratory statements of pre-emptions, the approval of the selections thus covered by such statements will be suspended to await the result of the pre-emption claims, which, if not established at the expiration of the period allowed by law, the selections of the State will then be approved; and this regulation will apply to all cases of selec-

37 tions heretofore made which have not already been finally diposed of by the Secretary of the Treasury.

I am, very respectfully, your obedient servant,

JAMES SHIELDS,
Commissioner.

Circular to registers of U. S. land-offices, dated August 6th, '47.

STATE SELECTIONS.

Circular to the United States registers.

GENERAL LAND-OFFICE,
August 6, 1847.

SIR: Herewith you will receive a copy of the 8th section of the act of 4th September, 1841, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights."

In order to facilitate the business of State selections under this act, I have to draw your attention to the following:

1st. The whole area to which the State of is entitled under this law is acres.

2nd. The act requires the sections to be "in parcels, conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location," &c.

Under this requirement a selection may include a whole section or a fractional section, or an island containing 320 acres, more or less, pro-
vided the State where the quantity is less than the prescribed
38 number of acres will agree to accept the same for and in lieu of a tract containing the full quantity of 320 acres, but not otherwise.

Or it may embrace the east, west, north, or south half of a section, or two adjoining quarters of different sections, or any number even of the smallest legal subdivisions of different sections, provided the tracts selected adjoin each other and form compact parcels, containing together not less than 320 acres.

3rd. The selections must be based upon the official township plats of the public surveys, which are required to be approved by the surveyor-general, and on file in the local land-office at the time of filing the selection.

th. The law allows selections to be made upon public lands whether offered or unoffered; but no State selection is admissible upon any land to which a pre-emption or other valid claim shall be legally established, nor on any land which "is or may be reserved from sale by any law of Congress or proclamation of the President of the United States," nor upon any tract which is reserved or withdrawn from market for any purpose whatever.

5th. The selecting agent of the State should file in your office an authenticated copy of his letter of appointment, or other satisfactory evidence of his authority; and—

It is important and necessary that he should make such careful and thorough preliminary examinations as will enable him to select lands to which there may exist no valid claim by pre-emption or otherwise; and to avoid the embar'assments and delays consequent upon such conflicts, you will also examine the plats, records, and papers in your
39 office before the lists of lands so selected are filed, and see that such selections are in all respects free from such objections.

6th. If, notwithstanding such precaution, the State shall hereafter select lands which shall be found to be interfered with by any prior or better claim or claims, the selection to the whole extent of such (claim or claims) will, of course, be null and void; and if such valid claim or claims shall only extend to a part of the selection, by the rejection of which the remaining portion or portions shall be reduced to one or more detached bodies below the quantity of 320 acres, the part or parts not interfered with may, nevertheless, be confirmed, provided the State will accept each detached parcel which may thus be reduced to less than 320 as equivalent to and in lieu of the full quantity of 320 acres; otherwise such part or parcels will be rejected on the ground of the land not forming the compact parcel required by law.

7th. That the action of this Office may be uniform, it is hereby determined, from the date of this circular, that when selections are reported to this Office which are found to conflict with declaratory statements of pre-emptors, the approval of that part of the section thus covered by such statement, together with such portion as may not be interfered with, but which would be less than 320 acres if the part covered by the declaration should be confirmed to the claimant, will be suspended to await the final result of the pre-emption claims, which, if not established at the expiration of the period allowed by law, the selection of the State will then be approved.

40 8th. Should a tract of land be selected by the State, and rejected on the ground of not forming the compact parcel required by law, it is no bar to its being reselected, provided other lands not interfered with is selected in connexion with it so as to form the compact parcel of 320 acres or more, as the case may be. Should such reselections be made, they are required to be embraced in an entire new list, bearing the number of the series at the time of such reselection.

Herewith you will receive the form of a list to be used for selections. This form requires the date to be given when the list is filed in your office, such date being regarded as the date of the selection, so that, in the event of a pre-emption or other conflict, the question as to priority of right may be properly settled. The lists should bear a regular series of numbers from No. 1, and should be signed by the agent. If the list is regular and complete you will enter up the seclections on your books and mark them on the plats. Sign the official certificate as to the correctness of the list of selections and transmit the same to this Office, in order that it may be submitted to the Secretary of the Treasury for his approval.

The law of Congress allows no commission on this business.

You are requested to acknowledge the receipt of this circular, which is designed to embrace all the material principles in previous circulars in reference to this subject and to be your rule of action in relation to this business in future.

Very respectfully, your obedient servant,

Commissioner.

41 NOTE.—The States designated in the first section of the act of Congress approved September 4, 1841, entitled "An act to appropriate the proceeds of sales of the public lands and to grant pre-emption rights," are Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan.

Act of September 4, 1841.

Sec. 8. And be it further enacted, That there shall be granted to each State specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement: Provided, That to each of the said States which has already received grants for said purposes there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres; the selection in all of the said States to be made within their limits, respectively, in such manner as the legislatures thereof shall direct, and located in parcels, conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States; which said locations may be made at any time after the lands of the United States in said States, respectively, shall have (been) surveyed according to existing laws. And there shall be, and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much
42 land as, including such quantity as may have been granted to such State before its admission, and while under a territorial government, for purposes of internal improvement as aforesaid, *as* shall make five hundred thousand acres of land, to be selected and located as aforesaid.

An act to authorize the governors of the States of Illinois, Arkansas, and Missouri to cause to be selected the lands therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emptions," approved September four, one thousand eight hundred and forty-one, as provides that the selections of the grants of lands made to the several States therein mentioned, for the purposes of internal improvement, shall be made, respectively, in such manner as the legislatures thereof shall direct, is so far modified as to authorize the governors of the States of Illinois, Arkansas, and Missouri to cause the selections to be made for those States without the necessity of convening the legislatures thereof for that purpose.

Approved March 19, 1842.

43 *Exhibit No. 7 of pl'tf's petition.—Certif. of Land Comr. to selection by State.*

GENERAL LAND-OFFICE,
June 25, 1855.

I, John Wilson, Commissioner of the General Land-Office, do hereby certify that the State of Missouri selected, under the 8th section of the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4th, 1841, fractional section nine, in township forty-four north, of range seven east of the fifth principal meridian, and that the said selection has been approved to said State according to law.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

{ SEAL OF U. S. GENL. LAND-OFFICE. } JOHN WILSON, *Commissioner of the General Land-Office.*

Exhibit No. 8 of pl'tf's petition.—Patent.—State of Mo. to Wm. M. McPherson.

The State of Missouri to all who shall see these presents, greeting:

Whereas by an act of the general assembly of the State of Missouri, approved March 10, 1849, the governor was authorized "to dispose of, at private sale, so much of the five hundred thousand acres of land granted to the State of Missouri by an act of Congress approved September 4th, 1841, as remained to be selected," and issue certifi-
44 cates to the purchaser or purchasers of said land upon payment of the purchase-money, acknowledging the receipt, and authorizing such *proceedure as* his assigns to locate the quantity of land so purch'ed in conformity to the act of Congress aforesaid;

And whereas William M. McPherson, of the county of St. Louis, in the State of Missouri, did, on the twelfth day of March, eighteen hundred and forty-nine, pay into the State treasury the sum of four hundred dollars in payment for three hundred and twenty acres of the land so authorized to be sold, and receive a certificate therefor authorizing the said McPherson or his assigns to make such location under the provisions of the laws aforesaid;

And whereas the said McPherson, on the 11th day of December, 1849, did locate said certificate upon fractional section nine, township number forty-four north, of range seven east of the fifth principal meridian, in the district of lands subject to sale at St. Louis, and, on the day and year last aforesaid, did relinquish so much of the three hundred and twenty acres as interfered with the survey of the common of Carondelet, and did then and there, in writing properly acknowledged, request the governor of the State of Missouri to relinquish the surplus to the United States, and to accept the said fractional section nine, containing 37.40 acres, instead of three hundred and twenty acres; and the governor having complied with the request, and notified the proper Department of the Government of the United States of the selection of the his relinquishment of the surplus, and the location having been approved by the proper officer of the United States Government at Wash-
45 ington, and the governor having been duly notified of the approval:

Now know ye, that I, Austin A. King, governor of the State of Missouri, in consideration of the premises, and by virtue of authority in me vested by law, have given and granted, and by these presents do give and grant, unto the said William M. McPherson, and his heirs, the above-described tract of land, to have and to hold the same, with the appurtenances, unto the said William M. McPherson, his heirs and assigns, forever.

In testimony whereof I, Austin A. King, governor of the State of Missouri, have caused these letters to be made patent, and have hereunto set my hand and caused the great seal of the State to be affixed, at the city of Jefferson, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty, of the Independence of the United States the seventy-fourth.

{ THE GREAT SEAL OF THE STATE OF MISSOURI. }

AUSTIN A. KING.

By the governor:

EP'RAIM B. EWING,
Secretary of State.

(Endorsed:)

STATE OF MISSOURI,
County of St. Louis:

I, the undersigned, recorder in and for the said county, certify that the foregoing instrument of writing was filed for record in my
46 office Dec. 23, 1851, and is truly recorded in book B, No. 5, page 265.

Witness my hand and official seal the date aforesaid.

[SEAL.] S. D. BARLOW,
Recorder.

To each and all of said papers and documents, at the time they were offered, these defendants then and there objected, for the reasons that said pretended selection was made on a tract of land less than three hundred and twenty acres, in violation of the act of Congress of 1841, and because the land selected under said proceedings was not subject to such selection or location, and because said land was then reserved from sale, and because the patent issued on such location was and is void.

But the court overruled said objections, and each of them, and admitted each and all of said papers and documents to be read in evidence; to each and every of which rulings the defendants then and there objected and *accepted*.

The plaintiff then offered in evidence the proceedings and so-called record of the Chartrand pre-emption, marked "Exhibit No. 9," as follows:

Exhibit No. 9, Chartrand pre-emption proceedings.

GENERAL LAND-OFFICE, *January.*

I, Jos. S. Wilson, Com. General Land-Office, do hereby certify that the annexed copies are true and literal exemplifications from the
47 record and files of , and contains all the testimony found on file in the "Heirs of Thos. Chartrand vs. William McPherson."

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[U. S. GENERAL LAND-OFFICE SEAL.] JOS. S. WILSON,
Commissioner of the General Land-Office.

Letter from U. S. land-officers at Boonville, Mo., to Com. Genl. Land-Office.

LAND-OFFICE, BOONVILLE, MISSOURI,
November 20th, 1863.

COMMISSIONER OF THE GENERAL LAND-OFFICE:

SIR: We herewith transmit the testimony in support of the pre-emption claim of the heirs of Thomas Chartrand, sen., to fractional sect. 9, town. 44, R. 7 E., with the accompanying documents therein referred to, 12 in number, and marked A 1, B 2, C 3, D 4, E 5, F 6, G 7, H 8, I 9, J 10, K 11, L 12.

This testimony was taken before B. F. Hickman, esq., a U. S. court commissioner, in the city of St. Louis. We also transmit the arguments of Samuel M. Coleman and Samuel V. Niles, esqrs., in behalf of the claim, numbered 1, 2, 3, & 4. Also the argument of William M. McPherson, esqr., adverse thereto, numbered 5, who claims the same
48 land by virtue of a State location thereon, under the 500,000-acre grant.

We subjoin a brief history of the proceedings had on the case since it was ordered to this office for a hearing.

In pursuance of the instructions contained in your letters of Nov. 26, 1861, and April 7, 1862, all the parties in interest were notified that proof in support of said claim would be taken before Thomas W. Levant, a justice of the peace, in the city of Carondelet, on the 9th of May, 1862, at which time the claimants appeared and produced certain witnesses, whose testimony was taken, and which is also transmitted, marked "A A."

In consequence of representations made to you by Mr. McPherson and Pete Delor, that sufficient time had not been given them of the hearing before Justice Levant, you instructed us, in your letters of May 26 and June 30, 1862, to notify all the parties that proof should be taken before B. F. Hickman, esq., U. S. court commissioner.

We therefore notified the parties that such proof would be taken at the office of said Hickman on the 25th August, 1862.

This proof is that referred to in the first paragraph of this report.

It appears from the testimony that Thomas Chartrand, sen., purchased this land of Louis or Honore Barada about the year 1829 or 1830; leased the same, received rent for it, and afterwards moved onto
49 it with his family and maintained undisputed possession of it to the time of his death, which took place in 1845.

It also appears that he made application to the land-office with witnesses to prove up his pre-emption and enter the land, but was refused by the land-officers.

The testimony on these points seems to be conclusive, and consequently we are of opinion that Chartrand acquired the right of pre-emption to the land.

It also appears that Thomas Chartrand, jr., as executor of his father's estate, applied to enter the land for the benefit of the heirs, but was refused by the land-officers.

In view of these facts we decide that the claimants are entitled to enter the land under the 2nd section of the act of March, 1843.

We would remark that the existence of the land was known in the land-office as early as the 18th of April, 1842, at which time the plat of survey was filed in the land-office.

Very respectfully, your obedient servant,

GEORGE W. BOARDMAN,
Register.

JOHN S. McFARLAND,
Receiver.

(Endorsed :) George W. Boardman, register, & J. S. McFarland, receiver, transmit the testimony & accompanying papers in support of the pre-emption claim of the heirs of Thomas Chartrand to fr. sec. 9,
50 T. 44, R. 7 E., with their opinion thereon in favor of said claim. R.

Case suspended till January.

H. W. R.

Ans. Jan'y 18th, 1864

H. W. R.

Book 2, p. 25.

Affidavit of Amable Chartrand.

Examined.

STATE OF MISSOURI,
County of St. Louis, ss :

Amable Chartrand, being duly sworn, on his oath saith that he covered and repaired the house in which Thomas Chartrand, sen., lived, on fractional section 9, T. 44 N., R. 7 E. of the 5th principal meridian, in the year 1835; he thinks in the spring ot that year; he recollects the year from the fact that Chartrand's wife had twin sons about that time, who were born in that house soon after it was repaired for him.

That said Chartrand lived there for some years, but does not recollect how many years; that he or his family held and cultivated the same from that time to the present; they have not cultivated it every year, but have had the possession of it and a portion of it enclosed.

AMABLE CHARTRAND.

Sworn and subscribed before me this the 5th day of May, 1851.

AUGUSTE GAMACHE,
Justice of the Peace.

51 *Affidavit of Thos. Watson.*

STATE OF MISSOURI,
County of St. Louis, ss :

Thomas Watson, of the city of St. Louis] and county aforesaid, being duly sworn, on his oath says that he was register of the land-office in the city of St. Louis in the year 1846, and that while he was the register, and on the 30 day of May, 1846, Mr. Thomas Chartrand, of St. Louis County, Missouri, filed in the register's office his written declaration to claim, under the pre-emption act of 1841, a pre-emption right, fractional section nine, township 44 N., R. 7 E. of the 5th principal meridian, containing 37.40 acres, and that said claim was filed conditionally, it being subject to the decision of the Commissioner of the General Land-Office respecting the Carondelet claim thereto. Affiant further states that the following is a copy of the certificate of the application which was granted on the 30th of May, 1846, to said Thomas Chartrand, viz:

"Mr. Thomas Chartrand, of St. Louis County, Mo., has filed in this office, on the present day, his written declaration to claim under the pre-'n. act of 1841, a pre-emption right to fractional sec. 9, T. 44, R. 7 E. of the 5th p'l m'd'n, containing 37.40 acres. Date of settlement stated to be 15th March, 1846. Said claim filed conditionally, it being subject to decision of the Department respecting the Carondelet claim thereto.

"Register's office, 30th May, 1846.

"For THOMAS WATSON,
"*Register.*

(Signed) "EDW. HUTANA, *Asst. Reg.*"

Sworn and subscribed before me the 7th day of May, 1851.

THOMAS WATSON.

52 Given under my hand and official seal.

JOHN H. WATSON,
The Law-Commissioner of St. Louis County.

Affidavit of Jno. Epes Cowan.

STATE OF MISSOURI,
County of St. Louis, ss:

John Epes Cowan, of Jefferson County, Missouri, being duly sworn, on his oath says that some time in the month of April, in the year eighteen hundred and forty-nine, he accompanied Thomas Chartrand, jr., for the purpose of assisting him to rebuild the house on fractional sect. 9, T. 44 N., R. 7 E. That Chartrand with his assistance did rebuild the house, and said Chartrand with his family moved into the house in the month of April of that year; in the same month affiant accompanied said Thomas Chartrand to the office of the register of lands, in the city of St. Louis, for the purpose of filing his application for a pre-emption right to said land, for the heirs of Thomas Chartrand, sr., and to make proof of the settlement and improvement of the land. The register refused to receive the proof, because the land had not been declared public. Affiant states that the house on said land was plastered in the year 1850, and occupied by Andrew Chartrand, one of the heirs of Thomas Chartrand, sen., dec'd; and affiant advanced the money to pay for plastering said house.

That some time in the year 1850, affiant inquired at the land-office in St. Louis, on behalf of the heirs of Thomas Chartrand, sen., whether the said tract of land had been declared public, and learned that
53 it had been entered in the name of the State of Missouri, and for the benefit of Wm. M. McPherson. Affiant then requested the register to hear the proof of the improvement and settlement of the land by the claimants, the heirs of Thomas Chartrand, sr., dec'd, and that the register declined doing so, and stated that he had no authority to interfere in the matter.

J. EPES COWAN.

Sworn to and subscribed before me this 7th day of May, A. D. 1851.
JOHN H. WATSON,
The Law-Commissioner of St. Louis County.

Affidavit of Margaret Heuston.

STATE OF MISSOURI,
County of St. Louis, ss:

Margaret Heuston, of the town of Carondelet and county aforesaid, being duly sworn, on her oath says that she was well acquainted with Thomas Chartrand, sr., deceased; that she was often in his house, and that not long before the death of said Chartrand she heard him express his intention to build a house upon the land which lies between the Carondelet and St. Louis commons, and which she believes is fractional section 9, T. 44 N., R. 7 E., where he had at that time an improvement; said Chartrand had timber lying in front of his house, which he purchased for the purpose of building a house on that land. This was in the year 1845, and not long before his death.

Affiant further states that said Chartrand resided on said
54 land in the year 1835, and that ever since that time he and his family have had a portion of it enclosed and in cultivation.

That Thomas Chartrand, jun., built a house on said land in the year 1846, and held it on behalf of the heirs of his father; that in 1849 said Thomas Chartrand, jr., erected another house on said land, the old house having been pulled down, and moved into the house.

That when he left it he put a tenant on the land, who remained there but a short time, in the year 1850.

Andrew Chartrand, a son of said Thomas Chartrand, sr., moved into said house and took possession of it for the heirs of his deceased father.

her
MARGARET + HEUSTON.
mark.

Witness, AUGUSTE GAMACHE.

Sworn and subscribed to before me this 5th day of May, A. D. 1851.
AUGUSTE GAMACHE,
Justice of the Peace.

Affidavit of Antoine Motier.

STATE OF MISSOURI,
County of St. Louis, ss:

Antoine Motier, of the town of Carondelet and county aforesaid, being duly sworn, on his oath says that he was well acquainted with Thomas Chartrand, sen.; that he, the affiant, lived on fractional section 9,
55 T. 44 N., R. 7 E., with Lewis Barada and his family, about the year 1828; that Barada and himself cultivated the land at that time. Affiant further states that he rented the same land in 1830 from Lewis Barada and cultivated it that year; that he understood that Barada had sold said land to Thomas Chartrand, sr., and that he, the affiant, rented from Chartrand the same land in the year 1834, and paid Chartrand $40 for the rent of it; that Chartrand, with his family, moved onto the land the next year, 1835, and cultivated it.

ANTOINE MOTIER.

Sworn and subscribed before me this the 5th day of May, 1851.
AUGUSTE GAMACHE,
Justice of the Peace.

* See letter filed herewith from F. P. Blair, jr., dated May 11th, 1852, in reference to the expression "by very unfair means," that expression being used by him from the representations of others & not of his own personal knowledge; wishes letter, which was a private one to Col. Benton, to be withdrawn from the files.

Letter M. & F. P. Blair, jr., to Thos. H. Benton.

DEAR COL.: I enclose you some papers refer'ing to the claim of the heirs of Thomas Chartrand, sr., deceased, to frac. sect. 9, T. 44 N., R. 7 E., containing 38.40 acres of land, and lying between the commons of St. Louis and Carondelet. This land is of great value, and a
56 patent has been obtained for it by Wm. M. McPherson, of this city, over the heads of the persons entitled to a pre-emption, by very unfair means.* The land has never been declared public, and the officers of the Government have constantly refused to take proof of the settlement and improvement of the land for the purpose of establishing the pre-emption right. McPherson well knew that the land was held in the possession of the heirs of Chartrand, and set himself to work to get a patent before the land should be declared public and the pre-emption right perfected. For this purpose he purchased from the State of Mis-

souri a certificate for 320 acres of the 500,000-acre grant to Missouri, and had the land selected for the State of Missouri in lieu of 320 acres, under the act of 1841, which enured to him as the holder of the certificate.

The object of sending the enclosed papers to you is to avail ourselves of your presence in Washington and your knowledge of this subject, and to obtain your assistance in having the matter referred back to the proper officers here for an examination to enable the heirs of Chartrand to make proof of the settlement and improvement of the land, and to obtain such a recognition of their rights by the Government as will enable them to enforce them in the courts.

We have been employed by the heirs of Chartrand to represent them in this matter, and we will be responsible to you for your fees in the case.

Very respectfully,

M. & F. P. BLAIR, JR.

Hon. THOMAS H. BENTON,
Washington City, D. C.

57 P. S.—The entry was not made here, but at Washington City, as may be seen by a letter of the Commissioner dated 20th April, 1850, herewith enclosed, and that without the land even having been declared public here, so as to give the pre-emptor an opportunity to prove up his case.

What is wanted by Chartrand is a patent from the Government, so that he may be in a condition to contest the regularity of McPherson's entry.

McPherson cannot contest our proof now, nor we his proceedings. Both are ex parte, but when both have patents we can go into the anterior proceedings.

Testimony taken before Justice Levant in May, 1862.

Examined.

Testimony taken in the case of Thomas Chartrand's heirs, claiming pre-emption to fractional section 9, T. 44 N., R. 7 E., containing 37.40, taken before me, Thomas W. Levant, at office in Carondelet, commencing May 9th, 1862, under an appointment of the register and receiver of the land-office at Boonville, Mo., of April 29, 1862.

Deposition of Antoine Motier.

ANTOINE MOTIER, being duly sworn, testified as follows:

I am fifty-five years of age. I leased the above fractional section 9, T. 44 N., R. 7 east, from Thomas Chartrand on the 1st of January, 1834, and resided there one year. He further states that Thomas Chartrand bought the above property of Honore Barada on or about 1831.

58 Mr. Thomas Chartrand owned the property until he died. He further states that he knows that Thomas Chartrand resided on the place himself. So far as I know there was no other claimant to said land during the existence of my lease, and I had peac'able possession for one year under said Thomas Chartrand. I believe that the Barada family were the original owners of this property and held it for several years previous to selling it to Thomas Chartrand, and after my lease

expired I delivered this property to Thomas Chartrand. I heard that Thomas Chartrand had applied at the land-office in St. Louis for a pre-emption right to said tract of land on or about the year 1834.

(Signed) ANTOINE MOTIER.

Sworn to and subscribed before me this 9th day of May, 1862. And I further certify that the above witness is a credible witness and reliable man.

THOMAS W. LEVANT,
Justice of the Peace and Commissioner.

Deposition of Margaret Huston.

Mrs. MARGARET HUSTON, aged sixty-nine years, being duly sworn, says she came to Carondelet in 1833, and that Mr. Thomas Chartrand owned and resided in person on fractional section 9, T. 44 N., R. 7 east. And she further states that Felix Chartrand and Paschal Chartrand, twin brothers, were born at the residence of their father, Thomas Chartrand, on said tract of land, and that they are now twenty-seven
59 years of age, and after the birth of said children Thomas Chartrand rented said tract of land to Antoine Motier. She further states that Thomas Chartrand continued in possession of said tract of land, and that a short time before his death he was preparing to build himself a new residence on said tract of land. He had on the tract window-frames, door-frames, lumber, &c., for the purpose of erecting his new dwelling. She further states that Mr. Thomas Chartrand resided in person on said tract of land and had possession at the time of his death, which occurred about the year 1845. She further states that after the death of Thos. Chartrand, his son Thomas Chartrand, as administrator or executor of the estate of his father, resided upon said land, claiming for himself and the other heirs of Thomas Chartrand, deceased; and Thos. Chartrand, jr., about the year 1849, moved from said tract of land and turned the possession of said tract of land over to his brother Andrew Chartrand, which occurred on or about the first of June, 1849, during the prevalence of cholera, which took place that year. She further states that the heirs of Thomas Chartrand have occupied or possessed said tract of land, by themselves or through their tenants, up to the present time. I was present at the death of Thomas Chartrand, and his will was read to him. He, Thos. Chartrand, deceased, said that after the death of his wife his whole property was to be divided equally between his seven sons, and that this tract of land formed a portion of his estate. (I heard Thos. Chartrand, jr., state that his father had applied to the land-office at St. Louis for a pre-emption right to said tract of land.)

(Signed) MARGARET her + mark HUSTON.

60 Sworn to and subscribed before me this 9th day of May, 1862. And I further certify that the above witness is a creditable witness and a reliable woman.

THOMAS W. LEVANT,
Justice of the Peace and Commissioner.

Dep'n. of Mrs. Laffler.

Mrs. VIRGINIA LAFFLER, aged fifty-two years, being duly sworn, says that she was acquainted with Thomas Chartrand during his life-

time and that he resided in person on fractional section 9, T. 44 N., R. 7 east, about twenty-two (22) years ago, when my husband rented the tract of land from Thomas Chartrand and we resided there one year, and then moved, turning the place over to Thos. Chartrand. And she further states that Thomas Chartrand owned the tract of land up to the time of his death. She further states that her son, John M. Laffler, leased the said tract of land from the heirs of Thomas Chartrand during the spring and summer of 1850. She further states that the heirs of Thomas Chartrand claim sad tract of land up to the present time.

(Signed) VIRGINIA her + mark. LAFFLER.

Witness, R. R. SOUTHARD.

Sworn to and subscribed before me *before me* this 9th day of May, 1862. And I further certify that the above witness is a creditable witness and reliable woman.

THOMAS W. LEVANT,
Justice of the Peace and Commissioner.

61 *Deposition of Michael Chartrand.*

Mr. MICHAEL CHARTRAND, thirty-six years of age, being duly sworn, testifies as follows: That his father, Thomas Chartrand, in his life-time made frequent applications, under the various pre-emption laws passed by Congress, to prove up a pre-emption upon fractional section 9, T. 44 N., R. 7 east, and that the same was refused by the land-officers at St. Louis. He farther states he saw a certificate signed by the register of the land-office at St. Louis stating that Mr. Thoms Chartrand had filed his pre-emption declaration in the land-office at St. Louis.

He further states that his father, Thos. Chartrand, took several witnesses to the land-office at St. Louis, Missouri, for the purpose of proving up his pre-emption to said tract of land and to make entry and pay for the same. And he further states that the land-officers in St. Louis refused to receive said proof and permit said Thomas Chartrand to enter said land.

(Signed) MICHAEL CHARTRAND.

Sworn to and subscribed before me this 10 day of May, 1862. And I further certify that the above witness is a creditable witness and reliable man.

THOMAS W. LEVANT,
Justice of the Peace and Commissioner.

Deposition of Thos. W. Levant.

Mr. THOMAS W. LEVANT, aged 87, being duly sworn, testifies as
62 follows: That he has resided in the city of Carondelet and county of St. Louis for the last twenty-one years, and became acquainted with Thomas Chartrand, sen., on or about the year 1841. I came to Carondelet in the month of August, 1841, and at this time Mr. Thomas Chartrand, sen., claimed to be the owner of fractional sec. nine, T. 44 N., R. 7 east, and had improvements on and was cultivating said tract of land. He further states that during the fall of 1844 Mr. Thomas Chartrand, sen., showed me a certificate of the register of the land-office at St. Louis of his intention

1841. See another copy of this testimony sent up by Cowan. (Papers No. 12.)

to claim the said tract of land under the pre-emption laws of Congress. He further states that Mr. Thomas Chartrand, sen., was an illiterate but an honest man, and sometimes applied to his friends to read his papers. He further states that under these circumstances this certificate of pre-emption was shown to him. He further states that Thomas Chartrand, sen., had said tract of land under a state of cultivation; that he had upon the same a residence and other valuable improvements, and that he continued in possession of said tract of land by actual settlement and cultivation up to the time of his death, which occurred about the year 1845. He further states that in the fall of 1841 he visited Mr. Thomas Chartrand at his place of residence; that he then claimed, owned, and possessed said tract of land as his property. He further states that after the death of Thomas Chartrand, sen., his heirs still claimed, owned, and possessed the said tract of land, and that they have continued to do so up to the present time, (May 10, 1862.) He further states that he is well acquainted with all the children of Thomas Chartrand, sen.; that they were all boys, seven in num-
63 ber, two of whom were twin brothers, (Felix and Paschal;) that in all their transactions, from infancy up to the present time, he has never known them to do a dishonorable act in any shape or manner, but, upon the contrary, were disposed to place confidence in all who approached them. He further states that two of the children are dead, Thomas Chartrand, jr., the oldest, and Lewis Chartrand, the youngest; and those now living are named as follows, and are the only heirs of Thomas Chartrand, sen., now living, to wit, Michael, Joseph A., Paschal F., Felix F., and Antoine T. Chartrand.

(Signed) THOMAS W. LEVANT.

STATE OF MISSOURI,
County of St. Louis, ss:

I, C. Lester Hamm, a notary public in and for said county and State, hereby certify that the deponent, Thomas W. Levant, whose residence is in the city of Carondelet, in the county of St. Louis, State of Missouri, was by me duly sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed by him in my presence, between the hours of eight o'clock a. m. and six o'clock p. m., at the county of St. Louis, State aforesaid, on the tenth day of May, 1862.

In testimony whereof I hereunto subscribe my name and affix my official seal, at the city of Carondelet, county and State aforesaid, this 10th day of May, A. D. 1862.

[SEAL.] C. LESTER HAMM,
Notary Public, St. Louis Co., Mo.

64 Examined.

WILLIAM M. MCPHERSON, of St. Louis, Missouri, states that he is the owner of all of fractional section 9, township forty-four north, range seven east, situate between the commons of St. Louis and Carondelet, except four arpens conveyed to Thomas Chartrand, four arpens conveyed to Peter Delore, and four and a half acres conveyed to the city of Carondelet and A. H. Menkins; that he has had all of said fraction, except the eight arpens conveyed to Chartrand and Delore, under inclosure and in actual possession for more than fifteen years, and therefore entitled to notice under the instructions of the General Land-Office for taking testimony in the Chartrand pre-emption case.

Affiant further states that he received about the first of March, 1862,

a notice from the register and receiver at Boonville that depositions would be taken on a day named before John M. Krum, U. S. commissioner, in St. Louis; that on the day named this affiant attended; but after two or three adjournments, from day to day, Judge Krum informed the parties that he had not the time to take such depositions. After consultation, it was agreed to have the depositions taken before B. F. Hickman, clerk of the U. S. circuit court at St. Louis, and an agreement to that effect was signed by J. Epes Cowan, as attorney for the Chartrand heirs, and this affiant, and forwarded to the register and receiver at Boonville.

The affiant further states that after the making of the agreement for taking depositions he left home about the 25th of April, 1862, on business in Washington and New York, and did not return to St. Louis until the 14th of May, 1862.

65 On his return he found a notice from the register and receiver at Boonville, which notice is hereto attached as part of this affidavit, notifying him of the taking of depositions before Thomas W. Levant, justice of the peace, at his office in the city of Carondelet, on the 9th day of May, 1862, and, on inquiry, affiant learned that the depositions had been taken on the day named, but that the depositions of Margaret Huston was not taken at the office of Justice Levant, but at the house of her daughter, in another part of the city, which fact was afterwards proved on the hearing of the case.

This affiant further states that he never had any notice, either actual or constructive, of the taking of depositions before C. Lester Hamm, notary public, on the 10th of May, 1862, or at any other day or time; and the first knowledge he had of the taking of Thomas W. Levant's deposition was in the month of June following. And upon these facts he has objected, and still objects, to the consideration of the affidavits so taken without notice in this case.

WM. M. McPHERSON.

Subscribed and sworn to before me this 24th day of August, 1865, at Washington, D. C.

[SEAL.] J. McKENNEY,
Not. Public.

[5-cent stamp, canceled.]

Notice to McPherson that testimony will be taken before Levant.

LAND-OFFICE, BOONVILLE, MO., *April* 29, 1862.

WM. M. McPHERSON,
St. Louis, Mo.:

66 You are hereby notified that, in pursuance of an order from the Commissioner of the General Land-Office, testimony in support of the pre-emption claim of Thomas Chartrand for 38.40 acres of land between St. Louis and Carondelet commons, designated as fractional section 9, T. 44, R. 7 east, will be received at the office of Thomas W. Levant, esqr., a justice of the peace for the city of Carondelet, Mo., on Friday, the 9th day of May, 1862, at 9 o'clock a. m.; at which time and place you are requested to be present, if you think proper to do so.

GEORGE W. BOARDMAN,
Register.
JOHN S. McFARLAND,
Receiver.

Testimony taken before Ben. F. Hickman.

(Copy.) Examined.

In accordance with the annexed notice, signed by register and receiver at Boonville, parties appeared at my office, in the city of St. Louis, Mo., on Monday, the 25th day of August, 1862, to attend to the taking of depositions, as stated in said notice, in support of the pre-emption claim of Thomas Chartrand to 38.40 acres of land between St. Louis and Carondelet commons, known as fractional section 9, T. 44, R. 7 E., and on which day the parties, as endorsed on said notice, and signed by them, agreed to continue such taking until the next morning, and then agreed to a further continuance until the 8th day of September, 1862, when the taking of said testimony was commenced and taken on different days by consent of said parties and to suit their convenience, as will be seen by my different memorandums and certificates hereto annexed.

67 BEN. F. HICKMAN,
Commissioner.

Notice to McPherson of taking depositions.

LAND-OFFICE, BOONVILLE, MO.,
July 9, 1862.

WILLIAM M. MCPHERSON, Esq.:

SIR: You are hereby notified that, in pursuance of instructions received from the Commissioner of General Land-Office, we have appointed Monday, the 25th day of August, 1862, at 9 o'clock a. m., at the office of Benjamin F. Hickman, esqr., a United States court commissioner, in the city of St. Louis, Missouri, as the day for taking depositions in support of the pre-emption claim of Thomas Chartrand to 38.40 acres of land between Saint Louis and Carondelet commons, known as frac'l sec. 9, T. 44, R. 7 E.; at which time and place you are requested to be present, if you think proper to do so.

GEO. W. BOARDMAN,
Register.
J. S. MCFARLAND,
Receiver.

(Endorsed:) Continued by consent until 9 o'clock to-morrow morning.

S. M. COLEMAN.
WM. M. MCPHERSON.

AUG. 25, 1862.

(Endorsed:) Continued by consent until Monday, the 8th day of September, 1862, at 9 o'clock in the forenoon.

S. M. COLEMAN,
WM. M. MCPHERSON.

68 *Deposition of Antoine Motier.*

SEPT. 8, 1862.

ANTOINE MOTIER, being duly cautioned and sworn, deposes and says:

My age will be 55 on the 25th day of November next. I live in Carondelet, and have been living there since I was born. I knew Thomas

Chartrand during his life-time. I knew his children. Thomas was the oldest of the family, Michael was the next oldest, Felix, Andres, Theophile, and Paschal. The Christian names of these children were as follows: Thomas Chartrand, Michael, Joseph A., Felix F., Paschal R., and Antoine T. I know the land described as fractional section 9, T. 44 north, range seven east. I have occupied said land—occupied it for one year—occupied it under Thomas Chartrand, sen.; it was in the year 1834. I moved on it on New Year's day, the first day of the year. Mr. Chartrand bought the land of Honore Barada. I am not really positive whether it was of Honore or Lewis Barada; some say of Lewis Barada, but I think it was of Honore Barada. Mr. Chartrand bought the land about the year 1829 or 1830, or somewhere near that time. He owned the land up to the time of his death. I know that after I left the place Mr. Chartrand moved on it with his family. He had not lived upon it before I lived on it. He may have done so; I don't recollect; can't tell how long he lived there—perhaps one or two years, and then moved back to Carondelet. I know of no claimant to said land during the time I lived on it. I paid rent to Mr. Thomas Chartrand, of whom I leased it. I had peaceable possession of the place during the time I lived upon it. When the time expired I returned to Mr. Chartrand. The Baradas had this land for several years before they sold it to
69 Mr. Chartrand. Mr. Barada built the house on it. There were a couple of acres on this fractional section attached to the house which was cultivated. One of old man Barada's sons (Louis) cultivated this. I cultivated these two acres during my lease under Chartrand. I lived in the house which Barada built. This was a hewed log-house. I don't know how long the house remained there after I left it. No portion of this land runs west of the so-called Stringtown road. I know Peter Delor. He never lived on any part of this ninth section, that I know of. Peter Delor is a cousin of mine, and I have known him since his birth. Delor's house is on the west side of the Stringtown road. The road divides his land from fractional section nine.

Question. Do you know of Mr. Thomas Chartrand, sr., having taken steps to establish a pre-emption on this land?

Answer. Not of my own knowledge. I know from statements made by others that he did. Mr. Thomas Chartrand, sr., may have told me himself. I cannot say as to that. I heard it many times that he had taken such steps.

(Answer objected to by Mr. McPherson as hearsay testimony.)

The land that Mr. Delor now lives on and has always lived on (on the Stringtown road) is a part of the common-fields of Carondelet. Delor has been living on that land for twelve or fifteen years. Before that he lived in the town of Carondelet, or on his father's place on the commons below the town. I believe the Stringtown road there by Delor's is on the eastern boundary of Carondelet common-fields. I know Mrs. Margaret Huston. She is a very old lady. I don't know her
70 exact age. I should take her to be between 70 and 75 years of age. I have not seen the old lady for 5 or 6 years, and don't know what use she has of herself; don't know where she is now, but believe she is now living on Big River. She lived in Carondelet a long time. She was intimately acquainted with the Chartrand family. One of her daughters married into that family. I knew her reputation for truth and veracity. I know it was good. She stood high as a truthful woman. I know nothing of her but honorable conduct. She moved her residence from Carondelet to Big River some two or three years since. I can't tell the precise time. I think that residence is some 20 or 25 miles from

Carondelet. I think it is in Jefferson County, Missouri. The road from Carondelet to her place is hilly. I don't know of any railroads or turnpikes in that direction.

(All the above statements in relation to Mrs. Huston objected to by Mr. McPherson.)

This land is northeast from Carondelet, and not over a half a mile from that town. I gave my testimony before in regard to this matter before Justice Levant.

Cross-examined by Mr. McPherson:

Mr. Chartrand lived in the town of Carondelet, about three-quarters of a mile from the land referred to. He lived there more than two years previous to the time he rented said land to me. I am certain that I moved on said land on the first day of the year 1834 and lived there during that year. Can't say about the boundaries. It was then called commons by some, and fractional sections by others. Never saw
71 the lines run. I know where the house stood, and can go and show the place. I don't know where the lines are, because I never saw it surveyed. I know the tract of land. Don't recollect ever giving any testimony in regard to pre-emption on this land prior to the present year. Don't know whether any part of the two acres cultivated by me on the east side of the Stringtown road, in the year 1834, was inside the commons of Carondelet or not. I believe not.

Re-examined by Judge Lockland:

I do remember now of giving testimony in regard to some matter about land at a time when Mr. Blair was present and Thomas Chartrand, jr., was present. This was after the death of Thomas Chartrand, sr.

(It is admitted that Thomas Chartrand, jr., was one of the executors of Thomas Chartrand, sr.)

It has been so long ago that I cannot remember whether the papers were made out for a pre-emption of Thomas Chartrand, sr., or Thos. Chartrand, jr., or whether it was about a pre-emption at all. Can't tell which of the Blairs was present, but think it was Francis P. Blair, jr.

Recross-examined by Mr. McPherson:

It was at least ten years ago, and after the death of Thomas Chartrand, jr.

ANTOINE MOTIER.

Deposition of Louisa Creely.

SEPT. 8, 1862.

LOUISA CREELY, being duly cautioned and sworn, deposes and says:

72 I am acquainted with fractional section nine; it lies north of Carondelet and east of the Stringtown road. This land belonged to Thomas Chartrand, sr. I always understood it belonged to Thomas Chartrand, sr., and visited it frequently while Thomas Chartrand, jr., lived on it. Thomas Chartrand, jr., claimed the land for himself and the other heirs of Thomas Chartrand, sr. I visited at Thomas Chartrand, jr.'s, house about thirteen years ago. He then lived on that land. Don't know how long he resided there. He had a house on the land, and he lived in it. Don't know whether it was his father's house or whether he built it. I know Mrs. Huston. Her condition is poorly, and has been for some time. Heard from her some two or three weeks ago; she was then sick a-bed; has not been able to travel, that I know of. Do not

think it possible for her to get here at the present time, on account of her sickness and the bad state of the roads. She gave her testimony in this case at my mother's house in Carondelet. Her situation was so poorly then that she had to lie down before she had finished giving her testimony. She (Mrs. Huston) was sick at my mother's house some six weeks after she had given her testimony in this case. The heirs of old man Chartrand still claim this property. Neither of the parties hold possession of the land at the present time, that I know of; am not certain about it. Mrs. Huston has been sick ever since she gave her testimony, and has not since been able to come to Carondelet. I live at Carondelet, and have been living there al my life. I am eighteen years of age.

73 Cross-examined by Mr. McPherson:

My mother's name, at whose house the deposition of Mrs. Huston was taken, is Nancy Creely. Justice Levant took the deposition. My mother's house is about 13 blocks from Justice Levant's. The justice' office is in the upper end of the town, and we live in the lower end of the town. I know nothing about the lines of fractional section nine.

Re-examined by Judge Lockland:

Justice Levant was obliged to come to my mother's house to take the deposition of Mrs. Huston; it was impossible for her to be moved. My mother's house is in Carondelet.

LOUISA CRELY.

Continued by consent until to-morrow (9th September) at 12 o'clock m.
BEN. F. HICKMAN.

Further adjourned until to-morrow (10th September, 1862) at ten o'olock in the forenoon.

Deposition of Mrs. Virginia Leffler.

10TH SEPT., 1862.

VIRGINIA LEFFLER, being duly cautioned and sworn, deposes as follows, to wit:

I was acquainted with Thomas Chartrand, sr., during his life-time; am acquainted with tract of land lying between St. Louis and Carondelet known as fractional section nine. Thomas Chartrand, sr., lived on said land about twenty-two or twenty-three years ago; can't recollect
74 the year. My husband rented the land from Thomas Chartrand, sr., and lived on it over a year, and raised a crop on it. Mr. Chartrand, sr., was living in the house on said land when my husband rented it. My husband moved into the house with Mr. Chartrand. My son lived in the house on said land. Do not know whether he rented it from Thomas Chartrand, jr., or from the heirs. This was about 12 years ago. I know of no one except the Chartrands claiming ownership of said land. I am fifty-two years of age. We first moved to Carondelet about twenty-six years ago. I am living there now.

Cross-examined by Mr. McPherson:

About seven acres of land was under cultivation while my husband lived on it. I think it was about seven acres. The land cultivated by my husband is on the east side of the Stringtown road. The land he cultivated on the east side of the Stringtown road was all on fractional

section nine. Know nothing about the lines of fractional section nine. I do not know where they run. I have given my testimony in regard to the pre-emption of this land before; it was before Justice Levant, in Carondelet, on the 9th of May last. I never gave my deposition in regard to this matter before that time.

her
VIRGINIA + LEFFLER.
mark.

75 The further taking of these depositions continued by consent until Friday, the 12th day of September, 1862, at 3½ o'clock p. m.

By consent the further taking of these depositions are continued until Wednesday, the 17th day of September, at 3 o'clock p. m.

Deposition of David C. Tuttle.

WEDNESDAY, *Sept.* 17, 1862.

DAVID C. TUTTLE, being duly cautioned and sworn, deposes and says that he knows where the fractional section 9, township 44, range 7 E., lies, and knows the lines pretty well. I once resided on the tract; according to my present recollection, I resided on it from some time in the latter part of the summer of 1848 to the spring or summer of the year 1849. I lived on the east end of the tract, and east of the old Carondelet road. When I went on the tract there was on it an old house and an old stable; both house and stable appeared to have been built some time. The stable was a log one, and I recollect that some of the logs were so decayed that I had to prop some of them up to keep my horse in the stable. The house I repaired, and built an addition to it; there was land cleared and had been in cultivation around the house and stable. On the north side of the tract the improvements of the Paddleford place extended over on the section 9 from half an acre to an acre and a half, and the most of it a vineyard. I was register of land-office
76 at St. Louis from 1853 up to 1857.

(Mr. Coleman objects to witness stating anything about his being register.)

Was, while I was register, familiar with the papers of the office and the records thereof. Recognize' the paper now shown him, marked "A, No. 1," as a copy of a record in that office. I examined all the records of pre-emption that I could find in that office, and found no record of any pre-emption bearing the name of Chartrand except this one. I searched for that express purpose. I have no interest in the land in controversy, directly or indirectly.

Cross-examined by Mr. Coleman:

The exhibit referred to is all in my handwriting, except the signature of Geo. W. Boardman, register. The copy was made by me on the day it bears date, viz, the 19th of June, 1862. Mr. McPherson employed me to go to Boonville to examine the records in relation to the Chartrand pre-emption. I did make the examination, and found this and obtained a copy of it. Mr. McPherson paid me for my services. While I lived upon the land, as above stated, I set up no pre-emption claim to it. I recollect that after the great fire in St. Louis in 1849 some of the records of the register's office were missing, and were presumed to have been burned, or lost in the moving of the records and papers of the office. I corresponded with the Commissioner of the General Land-Office about papers which were supposed to be thus destroyed or lost, on several occasions, both before and while I was register.

77 Re-examined by Mr. McPherson:

In regard to the loss of papers in the land-office of St. Louis, I would say the books in which the records of pre-emption were kept were not lost.

DAVID C. TUTTLE.

Deposition of Antoine Motier.

17TH SEPT., 1862.

ANTOINE MOTIER, being duly sworn and cautioned, deposes and says as follows:

I was on the improvement made by Chartrand, the same that I heretofore testified about in this case. I went on the ground in company with Mr. Leffingwell. I pointed out to him the piece of land that I had under under cultivation when I lived on Mr. Chartrand's land. I pointed it out as near as I could correctly. I showed him where Chartrand's house stood—the house in which I lived.

Cross-examined by Mr. Coleman:

I have not been on the land but very seldom since the year 1834. I recollect the shape of the place as well as I recollect myself being here to-day.

ANTOINE MOTIER.

Adjourned by consent until to-morrow (18th Sept.) at 3 o'clock p. m.

78 *Deposition of Jno. Pourcolli.*

18 SEPT., 1862.

JOHN POURCOLLI, being duly cautioned and sworn, deposes and says as follows:

I was acquainted with Thomas Chartrand, sen., in his life-time. I knew his lands in the common-fields of Carondelet. I saw the house where Chartrand lived; it was on the east side of the present Stringtown road. I lived about ten arpents from Chartrand's land. I know where the house of Chartrand stood, on the east side of the Stringtown road. I was on the land in company with Mr. Leffingwell last Monday. I pointed out to him where the house stood. I showed him where the boundaries of the field were in which the house was located. I know St. Arman Michaeu. He lived east of the Carondelet road, on the bank of the Mississippi River. He had a shot-tower there. He came there before St. Louis sold the commons. I don't exactly remember the year. He built a house and stable inside of what is now Mr. McPherson's enclosure. I pointed out that house and stable to Mr. Leffingwell last Monday. I covered that stable myself for Mr. Micheau. Don't recollect the year, but think it was about two years after he (Michaeu) came to live at the shot-tower. Mr. Michau built and lived in a stone house at the shot-tower. He moved from that house into the house which I showed to Mr. Leffingwell on last Monday. The last-named house is east of the Carondelet road.

Cross-examined by Mr. Coleman:

Mr. Micheau's business was that of making shot. He had a farm
79 at the stone house of about two arpents. He lived in that house about six years; can't tell exactly. He moved from the stone house into a little house on the side. He lived in the small house a couple of

years. I don't know whether he died there or at Carondelet. His family moved there afterwards, if not before his death. He had a small garden under cultivation around the little house. I was well acquainted with Thomas Chartrand, sr., during his life-time.

his
JOHN × POURCELLI.
mark.

Adjourned by consent until to-morrow (19th of Sept.) at 3 o'clock in the afternoon.

Deposition of Michael Chartrand.

19TH SEPT., 1862.

MICHAEL CHARTRAND, being duly sworn, deposes and says as follows:

I am not interested in the land known as fractional section 9, town. 44 north, range 7 east.

Questions by Mr. McPherson:

Are you one of the heirs of Thomas Chartrand, sr.?

Answer. I am.

Question. How is it, then, that you are not interested in the pre-emption claim?

Answer. I have sold my interest in the same and gave a quit-claim deed for it.

Question. Who did you sell that interest to?

Ans. I sold it to my brother Antoine T.

80 Q. When did you make the sale?

Ans. It was over a year ago, but I never made the deed until to-day.

Quest. Has he paid you for your interest?

Ans. He has.

Quest. How much did he give you?

Ans. He gave me $24.00, being the balance of a note of hand of mine for $2900.

(Mr. McPherson objects to the competency of the witness to testify.)

Examined by Mr. Coleman:

I saw my father have a certificate from the register of the land-office of St. Louis, stating that he had filed his declaration in said office to claim fractional section nine, town. 44, range 7 east, under the pre-emption laws of Congress. My father brought witnesses to St. Louis to prove up the pre-emption and make the entry. He was refused by the land-officers of St. Louis. I mean the application was refused. He was prevented from making the entry by the action of the officers of the land-office.

Cross-examined by Mr. McPherson:

I don't remember the date of the certificate. It was prior to 1840. I saw more than one; the first was prior to 1840. I am positive I saw two that my father had, and one that my brother had. I think the date of

81 the second certificate of my father's was 1841 or 1842. I think it was 1842. The date of my brother's certificate was later than that. I think it was in 1846. My brother's name that had the certificate was Thomas Chartrand. My father brought witnesses here to prove the pre-emption once; that I am positive of. I was with him at the time. We

all went to the land-office together. My father had two witnesses there at the time. I did not go up stairs, and therefore don't know what they did; I remained in the carriage. One of the witnesses was Joseph Le Blond. I think that a man by the name of Antoine Barada was there, but don't know the names of the other witnesses. There might have been three. When they came out of the office I took the certificate and read it. I don't know how many witnesses my brother had to prove his pre-emption; he never attempted to prove up any pre-emption for himself. My brother showed me his certificate. He attempted to prove the pre-emption for the heirs of my father—at least he said so, and I believe such was the case. My brother built a house on the land after my father's death. I helped him build it, and furnished some of the lumber myself. My brother Thomas moved into that house; I think he moved into it about 1848 or 1849. He lived there about a year; moved out of it, and turned over possession of it to a younger brother of ours, Joseph A. Thomas moved back to Carondelet after he left the house. He lived in Carondelet before he moved into the house. Joseph Le Blond and Antoine Barada are both dead. The certificate mentioned as having been obtained by my father, my impression is, was
82 signed by Richard B. Dallam. It is possible that there might have been two names signed to it, but can't now remember. I don't know whether Mr. Dallam is now living or dead; I don't know that I ever knew the man. I have never seen the certificate since my father's death. After my father died, Thomas took possession of the papers as administrator and had control over them. The certificate I have spoken of as having read at the land-office was the second certificate of my father's. My father died in 1845. At the time of his death he lived in Carondelet, about ½ or ¾ of a mile from this land. I am thirty-six years of age. The house that my brother Thomas and I built on this land is still standing on the land.

Re-examined by Mr. Coleman:

Question. Did Thomas Chartrand, jr., intend to file his declaratory statement in the name of the heirs of Thomas Chartrand, senior, he at the time being executor or administrator of your father's estate?

Answer. Yes, sir, he did; he intended to enter the piece of land in the name of the heirs.

Recross-examined by Mr. McPherson:

I did not go with my brother to the land-office when he made said application. I was not of age when he made the application; don't know whether I was or not. I can't fix the day when the application was made.

MICHAEL CHARTRAND.

Adjourned by consent to Monday morning next at ten o'clock.

83 *Deposition of Peter D. Barada.*

MONDAY, *Sept'r 22nd*, 1862.

PETER D. BARADA, being first sworn, deposes and says that he resides in Carondelet, and has resided there most of the time since the year 1803; have been acquainted with the common-field lots of Carondelet since about the year 1806 or 1807. My father owned two tracts of land in the common-fields of Carondelet. One of them was one of the extreme northern lots of those enclosed in the year 1810, and was purchased by my father about that time, (viz, 1810.) The other lot was

south of Peter Delore's land and adjoining him, and on the south it adjoined the land of Anable Chartrand, the father of Thomas Chartrand, sr. Thomas Chartrand, sr., afterwards purchased this last-described tract of land. During the time that my father owned this last-described tract his cultivation extended to the common-field line on the Stringtown road. My father also built a small log cabin east of the Stringtown road. He built it for a man who used to be in my employ, by the name, I believe, of Malgamot. This man lived in this cabin some two or three years, and I think from the years 1816 to 1818. Malgamot made a garden-patch around the house and cultivated it for his own use. The house above referred to was made of small logs and was about ten by twelve feet, and stood about where the fence now runs and between the apple-tree and the sink-hole, but a little south of the sink-hole. Malgamot was a single man, and had no family with him. Malgamot was a dissipated man, and left there, I think, about the year 1818, and I don't know what became of him. My brother built a house east of the Stringtown road and a little south of the house before described. My brother built this house about the year 1823 or 1824, and lived in it about two years, though I can't say positively how long. He made a larger
84 improvement than was there, probably of about two acres, and running westward from the house to the common-field fence. I was on this land where my brother lived last Saturday with Mr. Leffingwell, and showed him where, according to the best of my recollection, the house stood. My brother's name was Louis Barada, and when he left this land he rented it to a brother-in-law whose name was John B. De Lisle, and I think De Lisle lived there over one year. According to my recollection, Ovare Barada never lived on this land. At the time these improvements were made there was no road where the Stringtown road now runs; the travelled road then ran on the ridge four or five hundred feet east of my brother Louis' improvement. I knew St. Arnaud Mechau; he made an improvement on the bank of the Mississippi River and built a shot-tower. I think he began there in 1821. He lived there most of the time from 1826 or 1827 up to and after the sale of the St. Louis commons. He had cultivated these before he went there to live. The shot-tower referred to was located in the southeast corner of the St. Louis commons, and near the southern line of said commons; think Mechau's improvements extended a little south of commons line, but am not positive. Mechau when he left the land moved to Carondelet, and afterwards moved upon section 9; and I think he moved on section 9 in the year 1844, and think he died in 1844 or 1845. His family lived there a considerable time after his death, but I am not able to say how many years. The old man in his life-time, and his family after him, lived near the northeast corner of section 9, and had a small improvement there. The house in which they lived was a small frame one, and there was also a log stable on the land. I was told that Thomas Chartrand, sen'r, lived in the house that my brother built east of the Stringtown road. I
85 did not go about there much, and never saw him there; could not say at what time he lived there, if at all. Does not know what became of the little log house that my father built there. Does not know what became of the house my brother built there, though heard that it had been moved.

Being cross-examined by Mr. Coleman, states:

That in the year 1825 or 1826 Mr. Mechaur commenced building stone house in the commons of St. Louis, near the shot-tower. Canno say how long he was engaged in building the house; after it was fin

ished, Mechau lived in the house until after the sale of the St. Louis commons, and when he left it moved to Carondelet for a short time. Cannot say how much of an improvement there was around the house, but probably between three and four acres.

And further saith not.

PETER D. BARADA.

Deposition of Hiram W. Leffingwell.

HIRAM W. LEFFINGWELL, being sworn, says that he is a civil engineer and practical surveyor; have surveyed fract. sec. 9, township 44 N., R. 7 E.; have also surveyed two four-arpents lots off the west end of said section. The map now shown me, marked as "Exhibit B, No. 2," was made by me, and is a correct map of fractional sec. No. 9, and the lots on said map marked "Peter Delore and Thomas Chartrand" are the two four-arpent lots surveyed by me as above stated. I surveyed these lots, I believe, in the month of June, 1850. I have been on this land within the last few days in company Mr. Motier, Mr. Pourcelli, and Mr. Barada. They pointed out to me the place where the cabin of Thos. Chartrand, senr., stood, and the place thus shown me is
86 south of the south line of section 9. The place snown me is designated on said map. The improvement as shown me by Mr. Motier and Mr. Pourcelli are also designated by dotted lines on said map. When I first run the south line of section 9 there was a pile of stone about the place design'ed by the gentlemen above named, which was supposed to be the foundation of a chimney or house corner; the designation on the map of Mechan's cabin and log stable is correct, as pointed out by witnesses above named; the shot-tower, stone house, and improvements are also correctly designated on said map; the old road, as described by said witnesses, also laid down on said map. The cabin marked Thomas Chartrand, jr., is the cabin that was there when I first surveyed, and is still standing.

Being cross-examined by Mr. Coleman, says:

There is no sign now of a house standing at the point designated by the witnesses as the house of Thomas Chartrand, senr. Saw on section 9 one large apple-tree, forty or fifty feet north of the line. Don't recollect of seeing any plum-tree, not having had his attention called to such. It is about eighteen feet from the line to the point shown me by the witnesses as the place where they supposed the house stood.

And further saith not.

H. W. LEFFINWELL.

Adjourned until to-morrow, Tuesday, 23rd Sept., 10 o'clock.

TUESDAY, *Septr.* 23*rd*, 1862.

It is admitted and agreed that Felix Chartrand and Paschal
87 Chartrand, children of Thomas Chartrand, senr., were born on the 11th day of June, (1835,) eighteen hundred and thirty-five.

Deposition of Wm. H. Cozens.

WILLIAM H. COZENS, being sworn, says his business is that of a land-surveyor, and that he is at present county surveyor of St. Louis County; has run the lines of fractional section 9, township 44 N., range 7 east, being situated between the St. Louis and Carondelet commons, front-

ing on the Mississippi River and extending westwardly to the common-fields of Carondelet. The plat marked "Exhibit J, No. 10," is the result of said survey, the plat being herewith filed as part of the deposition. I was on this tract of land on Friday last, the 19th day of Sept., 1862, on the western end and near the southwest corner thereof. The land is partly cultivated. I have represented on my map the position of a heap of loose stones indicating the remains of a house or the chimney of a house; also the position of an apple and plum tree. Their relative position to the southern and western lines of the tract are given in feet. There is, also, north of these heaps of stone a sink-hole, situated at the northeast angle of the cultivated land, and traces of an old road located along the west and south edges of said sink-hole and passing to the east of said heap of stones and of the plum-tree. The apple-tree stands one hundred feet and six inches north of the southern line. The said tree is sixteen inches in diameter. I examined the land to the south of the line, and found no traces of any building; saw no fruit-trees of any kind south of line. The old stone building on the river is yet standing, and is the one formerly occupied by Mecheau. This building is situated within the St. Louis commons, and is distant four hundred and four feet and six inches northward of the north-
88 ern line of said fract. section 9, the vineyard extending over onto said fract. section 9 on the river-front, occupying less than one quarter of an acre in extent. That vineyard at one time belonged to a Mr. Paddleford. It afterwards became the property of a Mr. Tucker, and is now the property of the Hon. John M. Krum.

Being cross-examined by Mr. McPherson, says:

Within the old paling-fence on section 9, there is included little less than one acre of land. In the year 1852, this paling-fence was a very old one; but I don't know who placed it there. It was a part of the enclosure of the Meacheau tract of land, it forming the southern boundary thereof. I never knew of Mecheau being on section 9. The stones that I have referred to above as being near the sink-hole on the west end of the tract were lying loose on the top of the ground. They may have been hauled and deposited at that place. I did not see any distinct marks of the foundation of a house there. I did not examine sufficiently to determine if these rock were the foundation of a house. The land to the south of the line and opposite to this deposit of rocks is in cultivation. I have known that land to be in cultivation over twenty years.

Being re-examined by Mr. Coleman, says:

In his opinion, this deposit of rocks above referred to is the remains of the chimney of a house as it formerly stood, and that they have not been removed from any other site. In my opinion, fruit-trees indicate settlement.

And further saith not.

WM. H. COZENS.

89 To accompany these depositions, Mr. McPherson files exhibits marked "C, No. 3," "D, No. 4," "E, No. 5," "F, No. 6," "G, No. 7," "H, No. 8," "I, No. 9;" and Mr. Coleman files exhibit marked "K, No. 11."

Attest: BEN. F. HICKMAN.

After closing the deposition of Mr. Cozens and filing the exhibits above referred to, the parties present announced that they had closed

the taking of testimony on both sides and left the office; but in a very few minutes Mr. J. Eppes Cowan, who had been attending in part to the taking of such testimony, returned and asked of me not to certify or send off the papers, as he had some other witness or witnesses to examine. Mr. McPherson, when informed of this, objected to re-opening the case; but some weeks afterwards he and Mr. Cowan came into the office and consented to the taking of the following depositions of Virginia Leffler and John C. Ivory, and were both present at the taking of the same. After this, Mr. McPherson objected to being requested to attend any further to the taking of such depositions. Mr. Cowan then asked again that I should not certify or send off the depositions until he could get instructions from the proper department at Washington, which I consented to do.

BEN. F. HICKMAN,
Commissioner.

Virginia Leffler recalled.

VIRGINIA LEFFLER, being recalled as a witness by Mr. Coleman, after being duly sworn, deposes and says as follows, viz:

I have been examined before in regard to the matter in controversy of fractional section 9, township 44, range 7 east; once before Justice Levant, and once before Comr. Hickman.

90 Question. How was the house on that tract on which you resided with Thomas Chartrand, sr., situated?

Ans. It stood within about 60 feet of a sink-hole between a plum-tree and an apple-tree, about 35 feet from the apple-tree. Those trees are still standing. There are rocks there indicating the chimney and foundation of the house. It was a log-house with a porch on each side of the house. The chimney, I think, was a stone chimney.

her
VIRGINIA + LEFFLER.
mark.

Deposition of John C. Ivory.

JOHN C. IVORY, being duly sworn as a witness in this proceeding, deposes and says:

I am about 45 years of age, and live in this city, (St. Louis.) I have frequently seen the land described as fractional section 9, township 44, range 7 east. I have traced the line on the south between section nine and lands in which I was interested. I have noticed the lines all around said land, in driving past, for years back; had never took special notice of them, and never traced except the southern line. I have never seen any indications of a house on the south side of line dividing fractional section nine from the Carondelet commons in the enclosure heretofore claimed by the Chartrand's heirs and myself. There is no evidence of a house there. It has been cultivated as a garden for several years. I have not seen any foundation or stone there. There are stones on the north side of said line near the fence—between the line and the fence—large stones, which look as if they may have been parts of the foundation of a house. There are smaller stones scattered

91 about a cultivated ground between the line and the fence. I notice it the more because there is no strong soil about there. These large stones that I speak of lie between the plum-tree and the apple-tree. The smaller ones lay rather south or southeast from the

apple-tree. It is not a strong soil within the enclosure. I don't remember of a house being where these stones lie; don't remember of any house having been there; may have seen one, but don't say whether there was or not; don't recollect.

Cross-examined by Mr. McPherson:

The stones laying near the fence, some of them, were on the top of the ground, and some appeared to be in the ground. I have known fractional section 9 about twelve or thirteen years.

The front of the land has been enclosed for several years, and I suppose the sides have too.

JOHN C. IVORY.

It is agreed by the parties that Exhibit L, No. 12, is the proper certificate of the register of the land-office, and is to be received in evidence as such.

JANUARY 6TH, 1863.

Having received a joint letter signed by Geo. W. Boardman, register, and John S. McFarland, receiver, recommending me to pursue the examination of such witnesses as Mr. Cowan may wish to produce in support of Chartrand's claim to fractional sec. 9, T. 44, R. 7 E., and Mr. Cowan being on this day present with his witnesses, and Mr. Wm. M. McPherson, being also present, waives the formal notice to
92 him to be present, but objects to the re-opening of the case and to the taking of any additional testimony, alleging that the taking of such testimony was fully closed some time since.

Testimony of Isam Pigeon.

ISAM PIGEON, being sworn, says that he is forty-seven years of age, and lives in Carondelet; he knew old man Thomas Chartrand, and knew where he lived; was frequently at his house. The house that he lived in stood between a plum-tree and an apple-tree, and near to a sink-hole which was right in front of the house; both the trees above referred to are standing there yet. There are now a few rocks scattered around about where the house stood; the ground has been plowed and cultivated; the house was a log-house, with a porch in front, with a rock chimney; the house was on the east side of the present Stringtown road. Witness knew old Mr. Mecheau, who owned the shot-tower, and knows that his family lived in Carondelet at the time of his the said Mecheau's death. Mecheau died in a small frame house about one hundred yards below the rock house in which he had formerly lived; does not know whether he owned the frame house in which he died, but believes that he owned no property. Mecheau died all alone, no one being present. I was at the house and saw his body before he was buried.

And further saith not.

his
ISAM + PIGEON.
mark.

Testimony of Louis Guion.

LOUIS GUION, being sworn, says that he is 62 years of age, and lives in city of Carondelet, and has lived there upwards of 50 years.
93 Was acquainted with St. Amant Mecheau; knows that he moved to Carondelet in the year 1824; thinks he built the shot-tower in

1825 or 1826, and the stone house in which he lived in 1828 or 1829, or thereabouts. When Mecheau moved away from the stone house he moved again to Carondelet and took his family with him; then he left 'is family in Carondelet and went himself to the little frame house about 150 or 200 yards below the stone house. While Mecheau was living in this little frame house he had a small cart and two horses, and was engaged in hauling for different persons, and sometimes in hauling shot for Paddleford up to St. Louis. Mecheau's family never lived with him in this little frame house; this frame house stood east of the Carondelet road. When Mecheau died he was alone; his wife would occasionally come up to see him during his sickness. None of his family went into this frame house to live after the death of Mecheau. He, Mecheau, lived in this frame house for two or three years before his death.

And further saith not.

LOUIS GUION.

Michael Chartrand recalled by Cowan.

MICHAEL CHARTRAND, being recalled by John E. Cowan, deposes and says, on Tuesday, the 6th of January, 1863:

I know the lines of said land, (fractional section 9, township 44, range 7 east;) I know the house in which my father resided was located on said fractional section 9, for I saw the survey of survey No. 1 of the Carondelet commons made, and the north line of said survey No. 1 was fifteen or eighteen feet south of where my father's house stood. The house stood near the sink-hole described in the plat on exhibit herein, between the plum and apple tree which are still standing on said land.

I know that a man by the name of Wilcox, who lived on the old
94 St. Armamd Mecheau place, the old stone house which is standing yet on the St. Louis commons, built a stable, as he thought, upon the property belonging to that house, but which was really on fractional section nine. My father gave him notice in person that he was infringing upon his rights and would have to remove it. Wilcox said he had no desire to infringe on my father's land, but he had built it thinking it was on his own property, but he would remove it. He however never done so. He then left the place, and it afterwards (about 2 or 3 years after, perhaps) went into the hands of Hiram Paddleford.

Paddleford employed St. Armand Mechau to haul shot to St. Louis for him, and Mecheau fenced up the stable that Wilcox had built, for himself to live in while he was hauling shot for Paddleford, and did live there and die there, his family all the while residing in Carondelet. His family never lived in that house. There was no enclosure around said house (or stable) at any time that I know of. Old Mecheau may have put up a little fence for a horse-lot. I have frequently heard old Mecheau tell my father that he set up no claim to the fraction, as they called it then. Mrs. Mecheau told me time and again that she had no claim to said land, but that if any one was fool enough to give her five or six hundred dollars for her claim to the same she would not hesitate to take it, and would buy her a home. This was after the death of old man Mecheau and after she had conveyed it to some parties whom I don't

MICHAEL CHARTRAND.

Letter—Boonville land-office to B. F. Hickman.

LAND-OFFICE, BOONVILLE, MISSOURI,
December 3rd, 1862.

B. F. HICKMAN, Esqr.,
U. S. Commissioner:

95 DEAR SIR: In consequence of representations made to us by J. Epes Cowan, esqr., attorney for Thomas Chartrand, who claims by pre-emption fractional sec. 9, T. 44, R. 7 E., we would recommend that you pursue the examination of such witnesses as Mr. Cowan may wish to introduce in support of Chartrand's claim, as ordered by us on the 25th of Aug. last, giving all the parties in interest ample notice of the time when the testimony of such witnesses will be taken.

Very respectfully, your obt. servts.,
GEO. W. BOARDMAN, *Register.*
JOHN S. McFARLAND, *Receiver.*

Having received the annexed letter, dated 3 Dec., 1862, signed by George W. Boardman and John S. McFarland, I informed Mr. Cowan that I would attend to the taking of such further testimony as he might desire to offer, but as Mr. McPherson was absent from the city, I must await his return so as to give him the required notice, and as soon as I knew of his return I did notify him, and on the 6th January, 1863, he and Mr. Cowan was at office, and Mr. Cowan examined the witnesses. I saw Pigeon, Louis Guion, and Michael Chartrand, and their testimony as above written, Mr. McPherson declining to cross-examine the witnesses on the ground that the case ought not to be re-opened. I further certify that all the witnesses were regularly and duly sworn as required by law, and that their said testimony as above written was all written in the presence of said witnesses and read to them before signing.

Given under my hand this 7th day of January, 1863.

BEN. F. HICKMAN,
U. S. Court Comr.

[10-cent U. S. stamp cancelled.]

96 *Exhibit A, No. 1, Chartrand's pre-emption entry.*

Exhibit A, No. 1, referred to in testimony of D. C. Tuttle.

Declaratory statements of pre'n claims under act of 1841 on lands reserved, or on lands of which no plat as yet has been furnished this office. Conditionally filed. No promise granted by this office as to the final result. All subject to future legislation of Congress on the unconfirmed claims in Missouri.

No.	When filed.	Name.	Residence: County, Missouri.	Tract.	Sec.	T.	R.	When settled.	Remarks.
12	30th May, 1846.	Thomas Chartrand.	St. Louis Co., Mo.	Fractional sec.	9	44	7 E.	15th March, 1846.	Claimed by inhabitants of Carondelet.

LAND-OFFICE, BOONVILLE, MISSOURI,
June 19th, 1862.

I hereby certify that the above and foregoing is a true and perfect transcript or copy of the entry No. 12 of Thomas Chartrand's pre-emption of the pre-emption register, now in this office, formerly St. Louis district.

GEO. W. BOARDMAN,
Register.

97 (Here follows map marked page 97.)

Exhibit C, No. 3.—Deed.—Michaus to Christopher Rhodes.

This deed, made this twenty-fourth day of October, eighteen hundred and forty-five, by and between Margaret Michau, widow of St. Amand Michau, deceased, Saugrain Mechau & his wife, Hamillon Michau & his wife, and Alfred Mechau, all of the county of St. Louis & State of Missouri, of the first part, and Christopher Rhodes, of the said county, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of six hundred dollars to them in hand paid by the said party of the second part, receipt whereof is hereby confessed and acknowledged, do, by these presents, bargain and sell, convey, confirm, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand in law or equity, in possession, remainder, or reversion, of the said parties of the first part, in and to the following described tract or parcel of land, situated in said county of St. Louis, to wit: fractional section nine, in township forty-four north of the base-line of range seven east of the fifth principal meridian, bounded east by the Mississippi River, south by the most northern line of the survey of the commons of Carondelet, west by the eastern line of the survey of the common fields of Carondelet, and north by the most southern line of the survey of the commons of St. Louis, as appears by the plats in the office of the surveyor-general at St. Louis, containing, according to said plat, thirty-seven acres & $\frac{40}{100}$ of an acre, be the same more or less; also all our right, title, interest, & claim in law or equity in & to all lands or parcels of lands embraced in the survey of the St. Louis commons, be the same more or less: to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in any wise appertaining, unto him, the said party of the second part, his heirs and assigns forever. But it is expressly agreed and understood
98 that this conveyance is to operate only as a quitclaim-deed, and that we are in no event to be held liable for any defect in the title to the premises hereby conveyed, or any part thereof.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

(Signed) MARGARET her + mark. MECHAU. [SEAL.]
ALFRED MECHAU. [SEAL.]
SAUGRAIN MECHAU. [SEAL.]
TERESA H. her + mark. MECHAU. [SEAL.]

Signed, sealed, and delivered in presence of JOSEPH LE BLOND, by Margaret Mechau and Alfred Mechau to the first.

Attest: ALPHONSO WETMORE.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that Margaret Mechau and Alfred Mechau, who are personally known to the undersigned, a justice of the peace within and for said county, to be the persons whose names are subscribed to the within deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed, for the use and purposes therein contained.

Given under my hand this twenty-fifth day of October, eighteen hundred and forty-five.

JOSEPH LE BLOND, *J. P.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this twenty-fifth day of October, anno Domini eighteen hundred and forty-five, before the undersigned, a justice of the peace within and for the county aforesaid, came Saugrain Mechau, and Terrese A. Mechau, his wife, who are both personally known to me to be the same persons whose names are subscribed to the
99 foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. And she, the said Terese A. Mechau, being by me first made acquainted with the contents of the said deed, acknowledged and examined separate and apart from her said , acknowledged and declared that she executed the said deed and relinquished her dower in the real estate therein described, voluntarily, freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid.

ALPHONSO WETMORE,
Justice of the Peace.

Filed and recorded January 3rd, 1846.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder of deeds in and for said county of St. Louis, do hereby certify that the foregoing is a true copy of an instrument of writing executed by Margaret Mechau et al. to Christopher Rhodes, and of the certificates of acknowledgment, as also of the date of filing and recording thereof, as fully as the same remains of record in my office, in book W, No. 3, page 274.

Witness my hand and official seal at office, this the 22nd day of Septbr., 1862.

[SEAL.]

A. C. BERNOUDY, *Recorder,*
Per J. CONRAD, *Dep.*

Exhibit D, No. 4.—Deed—Leitsendorfer & wife to Rhodes.

This deed, made the fifth day of May, in the year eighteen hundred and forty-six, by and between Thomas Leitsendorfer, of the town
100 of Carondelet and county of St. Louis, State of Missouri, and Eliza Leitendorfer, his wife, of the first part, & Christopher Rhodes, of the aforesaid county & State, of second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ten dollars to them in hand paid by the party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents bargain, sell, convey, and confirm and quitclaim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand in law or equity, in possession or reversion, of the said parties of the first part in and to the following described tract or parcel of land situate in said county of St. Louis, to wit: Fractional section (9) nine, in township forty-four north of the

base-line of the range seven east of the fifth principal meridian, bounded east by the Mississippi River, south by the most northern line of the survey of the commons of Carondelet, west by the eastern line of the survey of the common-field of Carondelet, and north by the most southern line of the survey of the commons of St. Louis, as appears from the plat in the office of the surveyor-general at St. Louis, containing, according to said plat, thirty-seven acres and $\frac{40}{100}$ of an acre, be the same more or less; also, all our right, title, interest, and claim in law or equity in and to all lands or parcels of land embraced in the survey of the St. Louis commons, be the same more or less: to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in any wise appertaining, unto the aforesaid party of the second part, his heirs and assigns, forever. But it is expressly agreed and understood that this conveyance is to operate only as
101 a quitclaim-deed, and that we are in no event to be held liable for any defect in the title to the premises hereby conveyed, or any part thereof.

In witness whereof we have hereunto set our hand and seals the day and year first above written.

T. LEITSENDORFER. [SEAL.]
ELIZA LEITSENDORFER. [SEAL.]

Signed, sealed, and delivered in presence of—
JOSEPH LE BLOND.

Acknowledged May 5, 1846. Filed for record Feby. 10th, 1847, and duly recorded in book F, No. 4, page 330.

Exhibit E, No. 5.—Deed—Rhodes & wife to Cowles.

Know all men by these presents that we, Christopher Rhodes and Mary E., his wife, of the city and county of St. Louis and State of Missouri, for divers good causes and considerations thereunto moving, especially for the sum of eight hundred dollars, received to our full satisfaction of William P. Cowles, have remised, released, and forever quitclaimed, and do by these presents for ourselves, our heirs, executors, and administrators justly and absolutely remise, release, and forever quitclaim unto the said Cowles, and to his heirs and assigns, forever, all such right and title as we, the said Rhodes and wife, have or ought to have in and to the following-described real estate, situate in the county of St. Louis aforesaid, to wit: Fractional section nine, in township forty-four north of the base-line of range seven east of the fifth principal meridian, bounded east *of* the Mississippi River, south by the most northern line of the survey of the commons of Carondelet, west by the eastern line of the common-fields of Carondelet, and
102 north by the most southern line of the survey of the commons of St. Louis, as appears from the plat in the office of the surveyor-general at St. Louis, containing, according to said plat, thirty-seven acres and forty hundredths of an acre, be the same more or less; also, all the right, title, interest, claim, and demand in law or equity which the said Rhodes acquired in and to all lands or parcel of land embraced in the survey of the St. Louis commons, be the same more or less, by virtue of a deed of conveyance from Margaret Mechau, Alfred Mechau, Saugrain Mechau, and Teresa A. Mechau, to the said Rhodes, bearing date the 24th day of October, 1845, and recorded in the recorder's office of St. Louis County, in book W, No. 3, page 274 and following,

(all the lands hereinbefore described being the same acquired by said Rhodes by virtue of said deed:) to have and to hold the above released premises unto him, the said Cowles, and to his heirs and assigns, to their only proper use and behoof forever, so that neither they, the said Rhodes and wife, or any other person in their name and behalf, shall or will hereafter claim or demand any right or title to the premises, or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness whereof we have hereunto set our hands and seals this 18th March, eighteen hundred and forty-eight.

CHRISTOPHER RHODES. [SEAL.]
MARY E. RHODES. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that Christopher Rhodes and Mary E., his wife, who are personally known to the undersigned justice of the peace
103 for the county aforesaid to be the persons whose names are subscribed to the foregoing deed as parties thereto, this day appeared before me, at the county aforesaid, and the said Christopher Rhodes acknowledged that he executed the said deed for the purpose therein expressed, and the said Mary E. Rhodes, having been by me made acquainted with the contents of said deed, and on examination apart from her said husband, acknowledged that she executed the said deed and relinquished her dower in the real estate therein described freely, and without compulsion or undue influence of her said husband.

Taken and certified this eighteenth (18th) day of March, A. D. 1848.

MAUER BUTLER,
Justice of the Peace.

COUNTY OF ST. LOUIS, MO.:

I certify that the foregoing deed was filed for record in my office March 29th, 1848, and is truly recorded in Book S, No. 4, pages 46 & 47.

Given under my hand and official seal, at St. Louis, the date last aforesaid.

S. D. BARLOW,
Recorder.

Deed—Cowles & wife to McPherson.

This deed, made and entered into this twenty-seventh day of March, eighteen hundred and forty-eight, by and between William P. Cowles and Sarah R., his wife, parties of the first part, and William M. McPherson, party of the second part, all of the city of St. Louis, State of Missouri, witnesseth: That the said parties of the first part, in consideration of seven hundred dollars to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents bargain, sell, convey, and forever quitclaim unto the said party of the second part all their right, title, and interest in and
104 to the following-described tracts or pieces of land, situated in the county of St. Louis, to wit: Fractional section nine, in township No. forty-four north, in range 7 east of the fifth principal meridian; bounded east by the Mississippi River, south by the north line of the Carondelet commons, as surveyed by Brown, west by the eastern line of the Carondelet common-fields, and north by the commons of St.

Louis, containing thirty-seven acres and forty-hundredths of an acre; also, all the right, title, interest, claim, and demand in law or equity, as acquired of Christopher Rhodes by deed bearing date the eighteenth day of March, eighteen hundred and forty-eight; which lands are situated in the commons of St. Louis, and in the same interest acquired by said Rhodes from the Mechaus by deed: to have and to hold the same, with all the rights and privileges thereto belonging, unto the said party of the second part, his heirs and assigns, forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and date first above written.

WM. P. COWLES. [SEAL.]
SARAH R. COWLES. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this twenty-seventh day of March, 1848, before the undersigned, a justice of the peace within and for the county aforesaid, came William P. Cowles and Sarah R., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed, for the use and purpose therein contained. She, the said Sarah R., being by me first
105 made acquainted with the contents thereof, and on an examination apart from her said husband, acknowledged that she executed the same and relinquished her dower in the real estate therein named freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year last mentioned.

PHILIP McDONALD,
Justice of the Peace.

COUNTY OF ST. LOUIS, MO.:

I certify that the foregoing deed was filed for record in my office March 29th, 1848, and is truly recorded in Book S, No. 4, pages 47 & 48.

Given under my hand and official seal, at St. Louis, the date last aforesaid.

S. D. BARLOW,
Recorder.

Exhibit F, No. 6.

See page of this transcript.

State of Missouri, to Wm. M. McPherson.

PATENT FOR SECTION 9.

See page of this transcript.
Admitted without having certificate attached.

S. M. COLEMAN.

Exhibit G, No. 7.—Deed—McPherson & wife to Peter Delor.

Whereas one St. Armand Mechau heretofore settled upon fractional section nine, township forty-four north, range seven east, and after residing several years upon said land, departed this life without perfecting his title thereto; and whereas one Christopher Rhodes purchased from the heirs of said Michau their right of possession to said land, and after holding the quiet possession of the same for some time

conveyed it by deed to one William P. Cowles, who enclosed the greater portion of said tract with a plank fence, and early in the year
106 eighteen hundred and forty-eight conveyed to William M. McPherson all his right to said tract of land, and the said McPherson having since gone on and perfected his title to said tract of land by means of a State location; and whereas it now appears that one Peter Delore had enclosed a small portion of said fractional section nine along the west end thereof, and by reason of such enclosure and possession of the same set up a claim to said fractional section nine; and the said McPherson being ignorant of any such claim at the time of his purchase from said Cowles, and being willing to make a satisfactory adjustment of the claim of said Delore, did propose to give said Delore four arpens of land in satisfaction of his claim, or for the two to select a disinterested person who should say how much said McPherson should give said Delore for his claim in an equitable adjustment between man and man; if more than four arpens said McPherson to convey it; if the person selected should say less than four arpens, said Delore takes it in full satisfaction of his claim; and the said Delore having elected to take the four arpens of land as offered in full satisfaction of his claim:

Therefore this deed *is* made and entered into this twenty-eighth day of June, eighteen hundred and fifty, by and between William M. McPherson and Mary A. his wife, parties of the first part, and Peter Delore, party of the second part, witnesseth: That the said parties of the first part, in consideration of the above-recited premises and of the sum of eight dollars to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents bargain, sell, and convey unto the said party of the second part a certain tract or parcel of land situate in fractional section No. nine, town-
107 ship No. forty-four north, range seven east of the fifth principal meridian, bounded as follows, to wit: Beginning at the northwest corner of fractional section nine; thence south along the front line of the Carondelet common-fields two chains and ninety-four links to a stone; thence east along division-lines between this and the land conveyed to Chartrand ten chains and fifty links to a stone; thence north 8° east three chains and sixty-three links to a stone in the line of St. Louis common; thence west along the line of said common ten chains and twenty-five links to the place of beginning; containing four arpens of land: to have and to hold the same, with all the rights and privileges thereto belonging, unto the said party of the second part, his heirs and assigns, forever.

And the said Peter Delore hereby relinquishes all further claim to the remainder of said fractional section nine.

In witness whereof the said parties have hereunto set their hands and seals this day and date last above written.

WM. M. McPHERSON. [SEAL.]
MARY A. McPHERSON. [SEAL.]
his
PETER + DELORE. [SEAL.]
mark.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this 28th day of June, A. D. 1850, before the undersigned, clerk of the St. Louis County court, came William M. McPherson and Mary A. McPherson, his wife, and Peter Delor, who are personally known to me to be the same persons whose names are sub-

scribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned.

108 She, the said Mary A., being first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely, and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in St. Louis, the date last aforesaid.

[SEAL.] LEWIS F. LACY, *Clerk.*

Filed and recorded July 1st, 1850.

S. D. BARLOW,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true and complete copy of an instrument of writing from Wm. M. McPherson and wife to Peter Delore, and of the certificate of acknowledgment, and of the date of filing and recording thereof, as fully as the same remains of record in my office in Book L. 5, p. 537.

Witness my hand and official seal this 22 Sept., 1862.

A. C. BERNOUDY, *Recorder,*
Per J. CONRAD, *Depy.*

Exhibit H, No. 8.—Deed—McPherson & wife to Thos. Chartrand.

Whereas one St. Armand Mecheau, about the year 1833, settled upon fractional section nine, township forty-four north, range seven east of the fifth principle meridian, where he continued to reside for several years and up to the time of his death, and having departed this life without perfecting any title thereto; and whereas one Christopher Rhodes

109 purchased from the heirs of said Mecheau the right of possession of said land, and after holding the quiet possession of the same for some time conveyed the same to William P. Cowle, who enclosed about twenty-five acres of said land and then sold the same to William M. McPherson; and whereas said McPherson has proceeded to perfect his title to the same by means of a State location, and now holds a patent for said land issued by the governor of the State of Missouri upon a location made for the State of Missouri under the act of 4th September, 1841; and whereas it now appears that one Thomas Chartrand in his life-time has enclosed a part of the western end of said fractional section nine a'joining his land, and by means of his enclosure, possession, and cultivation made claim to said land, which claim was unknown to said McPherson at the time of his purchase from said Cowles; and said possession and claim being continued by Thomas Chartrand, jr., for himself and the other heirs of his father, and the said McPherson being willing to a'just the matter to the satisfaction of parties, did propose to said Thomas Chartrand, jr., that he would give to the heirs four arpens of land in satisfaction of said claim, or that he would leave the question to a disinterested person to be selected by the parties to say how much said McPherson should give as just between man and man, and such decision to be binding upon the parties; and the said Chartrand having elected to take the four arpens

as offered in full satisfaction of all claim: Therefore this deed *is* made and entered into this twenty-eighth day of June, eighteen hundred and fifty, by and between William M. McPherson and Mary A. McPherson, his wife, parties of the first part, and Thomas Chartrand, party of the second part, witnesseth: That the said parties of the first part, in consideration of the premises above recited and of the sum of eight dollars to them paid by said party of the second part, do by these presents bargain, sell, and convey unto said party of the second part
110 a certain tract or parcel of land, situated in said fractional section nine, beginning at the southwest corner of said fractional section nine; thence east along the north line of the Carondelet commons ten chains and seventy-five links to a stone; thence north 8° east three chains and fifty-seven links to a stone; thence west along the line of the tract this day conveyed to Delore ten chains and fifty links to the front line of the Carondelet common-fields; thence south along said front line two chains and ninety-two links to the place of beginning; containing four arpens: to have and to hold the same, with all the rights and privileges thereto belonging, unto the said party of the second part, his heirs or assigns, forever.

And the said Thomas Chartrand hereby relinquishes all claim to the remainder of said fractional section nine, either in his own right, under improvements, made or in right of his father.

In witness whereof said parties have hereunto set their hands and seals this day and year last above written.

WM. M. McPHERSON. [SEAL.]
MARY A. McPHERSON. [SEAL.]
THOMAS CHARTRAND. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this 28th day of June, 1850, before me, the undersigned, clerk of the St. Louis county court, came William M. McPherson and Mary A. McPherson, his wife, and Thomas Chartrand, who are all personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned. She, the said Mary A., being first made acquainted with the contents of said conveyance, acknowledged,
111 on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely, and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in St. Louis, the date last aforesaid.

[SEAL.] LOUIS F. LACY, *Clerk.*

Filed and recorded June 29th, 1850.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder of deeds in and for said county of St. Louis, do hereby certify that the foregoing is a true copy of an instrument of writing executed by Wm. M. McPherson and wife to Thomas Chartrand, and of the certificate of acknowledgement, as also of the

date of filing and recording thereof, as fully as the same remains of record in my office in Book K, No. 5, p. 577.

Witness my hand and official seal, at office, this the 17th day of Sept., 1862.

[L. S.] A. C. BERNOUDY, *Recorder.*
Per J. CONRAD, *D'p.*

Exhibit I, No. 9.—Certified copy of will of Thomas Chartrand, sr., and probate thereof.

In the name of God. Amen. I, Thomas Chartrand, senior, of the county of St. Louis, and State of Missouri, do publish and make this my last will and testament, in manner and form following, to wit:

First. It is my will that my body be decently buried in the Catholic grave-yard in Carondelet.

Second. It is my will that my funeral expenses and all my just
112 debts be paid.

Thirdly. I give and bequeth to my beloved wife, Mary Ireïne, in lieu of her dower, all the real estate, lands, farms, or town-lots that I have now in possession, or to which I have legal right, either by actual possession or by deeds, during her natural life, and all the live-stock, horses, cattle, sheep, hogs, &c., by me now owned; also all the household furniture and other items not particularly mentioned and otherwise disposed of in this will, during her natural life as aforesaid; she, however, disposing of a sufficiency thereof to pay my just debts as aforesaid. And at the death of my said beloved wife, Mary Ireine, all the property hereby devised or bequeathed to her as aforesaid, or so much thereof as may then remain unexpended, to my seven sons, Thomas Chartrand, junior, Michelle Chartrand, Joseph Andrees Chartrand, Felix Fortrune Chartrand, Paschal Fortune Chartrand, Antoine Theopoile Chartrand, and Louis Fremont Chartrand, and to their heirs and assigns, forever, to be amongts them, their heirs or assigns, equal' divided. And lastly, I hereby constitute and appoint my said wife, Mary Ireine, and my son Thomas Chartrand, junior, to be the executors of this my last will and testament, revoking and annulling all former wills by me made, and ratifying and confirming this, and no other, to be my last will and testament.

In testimony whereof I have hereunto set my hand and seal at Carondelet, this seventh day of July, in the year of our Lord one thousand eight hundred and forty-five.

his
THOMAS X CHARTRAND, SENIOR. [SEAL.]
mark.

Signed, sealed, published, and declared by the above Thomas Chartrand, senior, to be his last will and testament, in presence of us, who, at his request, in his presence and in the presence of each other, have signed as witnesses to the same.

JOSEPH LE BLOND.
113 JOSEPH CHATTILION.
AMABLE CHARTRAND.
ANTOINE ROBERT.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this thirtieth day of August, in the year of our Lord one thousand eight hundred and forty-five, before me, Peter Ferguson, judge of probate in the county of St.

Louis, in the State of Missouri, personally appeared Joseph Le Blond and Joseph Chattillion, two of the subscribing witnessess to the foregoing instrument of writing, who, being by me duly sworn, on their oath severally deposed and said that they were present and saw Thomas Chartrand, senior, now deceased, make his mark to said instrument by way of signing the same, being unable to write, and heard him publish and declare the same to be his last will and testament; that at the time of so doing he, the said Chartrand, was of sound and disposing mind, to the best of their knowledge, observation, and berief; that they, the said affiants, and Antoine Robert and Amable Chartrand, the other subscribing witnesses, subscribed their names to said instrument in the presence and at the request of the testator, and in the presence of each other as witnesses to the same.

JOSEPH LE BLOND.
JOSEPH CHATTILLION.

Sworn to and subscribed before me this 30th day of August, 1845.
PETER FERGUSON, *Judge of Probate.*

On the preceding affidavits of Joseph Le Blond and Joseph Chattillion, I, Peter Ferguson, judge of probate of the county of St. Louis aforesaid, consider the instrument in writing signed by Thomas Chartrand, senior, to be duly proved to be the last will and testament of Thomas Chartrand, senior, deceased.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county aforesaid, at office, in the county of St.
114 Louis and State of Missouri, this thirtieth day of August, in the year of our Lord one thousand eight hundred and forty-five.

[SEAL.] PETER FERGUSON, *Judge of Probate.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, Peter A. Feldman, clerk of the probate court of the county of St. Louis, certify that the foregoing is a true copy of the last will and testament of Thomas Chartrand, senior, and the probate thereof as the same now remains on file in the office of the judge of probate of the county of St. Louis, and as the same now remains of record in said office in the record of "letters and wills," Book O, p. 117 & following.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of Saint Louis, at office, in said county, this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] PETER A. FELDMAN, *Clerk.*

Letters testamentary granted to Thomas Chartrand et al.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to all persons whom these presents come, greeting:

Know ye, that the last will and testament of Thomas Chartrand, sen'r, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the judge of the probate court for St. Louis County, a copy of which is hereto annexed, and inasmuch as it appears that Marie Irene Chartrand and Thomas Chartrand, junior, have been appointed executors in and by the said last will and testament to execute the same, and

115 to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize them, the said Mary Irene Chartrand and Thomas Chartrand, junior, as such executors, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Thomas Chartrand, senior, at the time of his death, in whosoever hands or possession the same may be found, and to perform and fulfill all such duties as may be enjoined on them by said will, so far as there shall be property and the law charge them, and in general to do and perform all other acts which now are or hereafter may be required of them by law.

In testimony whereof I, Peter Ferguson, judge of the probate court in and for the county of St. Louis, hereto sign my name and affix the seal of said court, at office, this thirtieth day of August, A. D. 1845.

[L. S.] PETER FERGUSON,
Judge of Probate.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Peter A. Feldman, clerk of the probate court of the county of St. Louis, certify that the foregoing is a true of the letters testamentary granted to Marie Irene Chartrand and Thomas Chartrand, junior, on the estate of Thomas Chartrand, senior, as the same now remains of record in the office of the judge of probate of the county of Saint Louis.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office, in said county, this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] PETER A. FELDMAN, *Clerk.*

116 *Exhibit K, No.* 11.—*Filed by Mr. Coleman.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, Willliam F. Ferguson, judge of probate of the county of St. Louis, certify that the foregoing is a true copy of the last will and testament of Thomas Chartrand, senior, deceased, and the probate thereof, as the same now remains on file in my office, and as the same now remains of record in said office in the record of "letters and wills," Book C, page 177 and following.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office, in said county, this tenth day of September, in the year of our Lord 1862.

[SEAL.] WILLIAM F. FERGUSON,
Judge of Probate.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to all persons to whom these presents shall come, greeting:

Know ye, the last will of Thomas Chartrand, sr., deceased, hath in due form of law been exhibited, proved, and recorded in the office of the

judge of probate court for St. Louis County, a copy of which is hereunto annexed, and inasmuch as it appears that Marie Irene Chartrand and Thomas Chartrand, junior, have been appointed executors in and by the said last will to execute the same, * * * * * * and to the end that the property of the testator * * * * may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, * * * we do hereby authorize them, the said Marie Irene Chartrand and Thomas Chartrand, junior, as such executors, to collect and secure all and singular the goods and chattels, rights and
117 credits, which were of the said Thomas Chartrand, senior, at the time of his death, * * * in whosoever possession the same may be found, and to perform and fulfill all such duties as may be enjoined on them by said will so far as there shall be property and the law charge them, and in general to do and perform all other things which now are or which hereafter may be required of them by law.

In testimony whereof I, Peter Ferguson, judge of the probate court in and for the county of St. Louis, hereto sign my name and affix the seal of said court, at office, this 30*rd* day of August, A. D. 1845.

[SEAL.] PETER FERGUSON,
Judge of Probate.

STATE OF MISSOURI,
County of St. Louis, ss :

I, William F. Ferguson, judge of the probate court for the county of St. Louis, certify that the foregoing is a true copy of the letters testamentary granted to Marie Irene Chartrand and Thomas Chartrand, jr., on the estate of Thomas Chartrand, sr., deceased, as the same now remains of record in my office.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county aforesaid, at office, in said county, this 10th day of Sept'r, A. D. 1862.

[SEAL.] WILLIAM F. FERGUSON,
Judge of Probate.

Exhibit J, No. 10.

(Here follows map, marked page 118.)

119 *Exibit L, No.* 12.—*Filed by Mr. Coleman.*—*Watson's certificate of Chartrand's filing pre-emption declaration.*

Mr. Thomas Chartrand, of St. Louis Co., Mo., has filed in this office on the present day his written declaration to claim, under the pre-'n act, 1841, a pre-emption right to fract. sec. 9, T. 44 N., R. 7 E., of 5 pr'l m'd' cont'g $37\frac{40}{100}$ acres.

Date of settlement stated to be 15th March, 1846. Said claim filed conditionally, it being subject to the decision of the Department respecting the Carondelet claim thereto.

Register's office, 30th May, 1846.

For THS. WATSON, *Reg'r*,
EDW. HATAWA,
Asst. Reg'r.

Affidavit of Peter D. Barada.

ATE OF MISSOURI,
County of St. Louis, ss :

PETER D. BARADA, of lawful age, upon oath says that he is a resi-nt of the city, formerly town, of Carondelet, and has resided there ost of his life; that at the regular annual election on the first Monday April, eighteen hundred and thirty-eight, this affiant was elected a ustee of said town of Carondelet, along with N. Paupe, C. J. Shoults, idore Barada, and Thomas Chartrand; that at the time of the election e said Thomas Chartrand lived near me in the town, and was the same an who purchased an improvement of my brother in front of the Ca-ndelet common-fields, where his heirs are now claiming a pre-emp-on.

Affiant further says that he has heard his name called Thomas Char-an, and seen it written Thomas Chartran, but when so called or writ-n it referred to Thomas Chartrand, as no other person of the proper me of Thomas Chartran lived in the town since my earliest recollec-on.

Affiant further states that the said Thomas Chartrand had a son 0 Thomas, who became of age about the year eighteen hundred and forty or eighteen hundred and forty-one, after which the father d son were generally designated as Thomas Chartrand, senior, and homas Chartrand, junior.

And further deponent saith not.

PETER D. BARADA.

Sworn to and subscribed before me this 2d day of October, 1865.
[SEAL.] EDWARD J. MITCHELL,
Notary Public, St. Louis County, Missouri.

cent stamp, cancelled.]

xtracts from journal of proceedings of the bd. of trustees of town of Caron-delet.

xtracts from the journal of the proceedings of the board of trustees of the town of Carondelet.

SATURDAY, *April 7th*, 1838.

On this day Messrs. N. Paupe, P. D. Barada, Thomas Chartran, P. J. noults, and Isador Barada produced their certificates of election from nder the hands of Antoine Barada, Eugene Leitensdorfer, and J. B. hoults, judges appointed to superintend the election held on the 2nd y of April to elect five trustees for the ensuing year. Having taken e oath required by law, they proceeded to the election of a chairman. r. Paupe was unanimously elected chairman for the board.

MONDAY, *April the 9th*, 1838.

The board met; were present all members. The bond of P. D. Ba-da, as treasurer, was this day presented and accepted.

SATURDAY, *April 14th*, 1838.

The board met; were present Messrs. N. Paupe, P. D. Barada, Thomas Chartrand, and Isidor Barada, Mr. P. J. Shoults being

absent. The proceedings of the last meeting having been read, a communication from Mr. Joseph Le Blond was read.

THURSDAY, *April 26th*, 1838.

The board met. Present all members. The proceedings of the last meeting having been read and approved.

THURSDAY, *May the 3rd*, 1838.

The board met. Present, Messrs. N. Paupe, P. J. Shoults, Isador Barada, and Thomas Chartrand; Mr. P. D. Barada absent.

MAY THE 17TH, 1838.

The board met. Present, N. Paupe, Thomas Chartrand, P. D. Barada, P. J. Shoults, and Isador Barada. Mr. Louis La Fleur presents his account for repairing all the streets during three months, from February the 10th to May the 10th, $5000.

THURSDAY, *May 24th*, 1828.

Pursuant to adjournment, the board met; were present, Messrs. N. Paupe, P. D. Barada, P. J. Shoults, Thomas Chartrand, and Isadore Barada.

FRIDAY, *July 13th*, 1838.

Pursuant to adjournment, the board met; were present, N. Paupe, P. D. Barada, and Isador Barada. Mr. Thomas Chartrand tenders his resignation this day to his office of trustee, which was accepted, upon which the board ordered that an election should be held on the 26th inst. to fill the vacancy occasioned by said resignation, and that Messrs. Louis Fassen, Ant. Barada *Barada*, and S. B. Shoults be requested to serve as judges of the same.

STATE OF MISSOURI,
County of St. Louis, City of Carondelet, ss:

I, A. L. Burgfelt, register of the city of Carondelet, do hereby
122 certify that the foregoing extracts from the journal of the proceedings of the board of trustees of the town of Carondelet, under the respective dates of the 7th, 9th, 14th, & 26th of April, of the 3rd, 17th, & 24th of May, and of the 13th July, in the year 1838, are truly and correctly copied from said journal as the same now remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the corporate seal of said city this 28th day of Septr., A. D. 1865.

[SEAL.] A. L. BERGFELT, *Register.*

Extracts from poll-book of town of Carondelet.

Extracts from the poll-book of the town of Carondelet.

An account of votes taken this 4th day of April, 1836, in the town of Carondelet for five trustees for said town.

Louis Guion, François Lafavre, and Amable Chartrand were duly appointed as judges of said election, and qualified according to law,

whereupon the said judges appointed Joseph L. Blond & Jacob R. Stine clerks of said election; qualified accordingly.

No.	Names of voters.
"	.....
"	.....
14	Thomas Chartrand.
"	.....
"	.....
"	.....

123 We, the undersigned judges, appointed and duly sworn to superintend an election held the 4th day of April, 1836, for five trustees, do hereby certify that the abstract of votes is a true list thereof, and that Louis Guion had fifty-eight (58) votes, and Amant Michau had fifty-one (51,) John N. DeLisle had forty-seven (47,) and Eugene Leitensdorfer had thirty-five votes, (35,) having received the highest number of votes are elected trustees for said town.

LOUIS GUION.
AMABLE CHARTRAN.
F. M. LE FAVRE.

JOSEPH LE BLOND, *Clerk*
JACOB R. STINE, *Clk.*

Account of votes taken at an election for a trustee held at Carondelet Sept. 30th, 1837.

No.	Names.
1	.....
"	.....
"	.....
14	Thomas Chartrand.
"	.....
"	.....
"	.....

We certify that the above is a correct list of the votes taken Sept. 30th, 1837, and that Isador Barada is duly elected.

EUGENE LEITENSDORFER.
+LOUIS CONSTAN.
+ANTON BERDA.

P. L. MCLAUGHLING, *Clerk.*

124 An account of votes taken at an election held on the 6th day of April, 1840, in the town of Carondelet, for the election of five trustees for said town.

No.	Names of voters.
"	.....
"	.....
10	Thomas Chartrand.
"	.....
"	.....

We, the undersigned judges, duly appointed and qualified to superintend an election held on the 6th day of April, 1840, certify this to be a correct statement of the votes taken on that day.

Carondelet, April 6th, 1840.

P. C. RODIER.
SAUGRAIN MECHAU.
F. M. LE FAVRE.

P. L. McLAUGHLING, *Clerk.*

Account of votes taken at an election held on the 5th day of April, 1841, in the town of Carondelet, for the election of five trustees for said town.

	Names of voters.
"	.....
"	.....
"	.....
47	Thomas Chartrand.

125 We, the undersigned judges, duly appointed and qualified to superintend an election held on the 5th day of April, 1841, certify this to be a correct statement of the votes taken on that day.

Carondelet, April 5th, 1841.

DAVID BIGGS.
P. C. RODIER.
JOSEPH COURTJE.

P. L. McLAUGHLING, *Clerk.*

Account of votes taken at an election held in the town of Carondelet on the 2nd day of April, 1842, for the election of five trustees for said town.

N.	Names of voters.
"	.....
"	.....
28	Thomas Chartrand, sr.
"	.....
"	.....

We, the undersigned judges, duly appointed & qualified to superintend an election held on the 4th day of April, 1842, certify this to be a correct statement of the votes taken on that day. Messrs. Joseph Le Blond and John B. Shoults having received the same number of votes, the judges drawed lot which of the two should be elected, whereupon Joseph Le Blond was elected.

Carondelet, April 4th, 1842.

HAMILTON MÉCHAU.
P. J. SHOULTS.
HENRY CHOUQUET.

P. L. McLAUGHLING, *Clerk.*

126 Account of votes taken at an election held in the town of Carondelet on the 3rd day of April, 1843, for the election of five trustees for said town.

No.	Names of voters.
1	Thomas Chartrand, sr.
"	.....
"	.....

We, the undersigned judges of the aforesaid election, do certify that the following number of votes were given for each and every candidate as here below detailed, to wit:

Joseph L. Blond (had) forty-eight votes.....(48)
George F. Eichelberger (had) fifty votes .....(50)
Jacob W. Hoffman (had) thirty-four votes.....(34)
Joseph Guion (had) forty-five votes.....(45)
Antoine Barada (had) fifty-two votes.....(52)
John Cromwell (had) fifteen votes.....(15)
John B. Shoults (had) twenty-four votes.....(24)
Amable Chartrand (had) nineteen votes.....(19)
Louis Constant, jr., (had) nine votes.....(9)
John B. Merace (had) fifteen votes .....(15)
James McCowan (had) two votes.....(2)
And one ticket being thrown out for illegality.

Certified under our hands and seals this 3rd day of April, A. D. 1843.

JAMES C. EVANS. [SEAL.]
LOUIS GUION. [SEAL.]
HENRY CHOUQUET. [SEAL.]

Test:
HAMILTON MECHAU. [SEAL.]

An account of votes taken at an election held in the town of Carondelet on the 7th day of April, 1845, for the election of five trustees for said town.

127

No.	Names of voters.
"	.....
"	.....
7	Thomas Chartrand, sr.

We, the undersigned judges of the election, do certify that the following number of votes were given for each and every candidate as here below detailed, to wit:

Antoine Motier	had nineteen	votes	.....	(19)
Joseph L. Blond	" thirty	"	.....	(30)
John B. Shoults	" thirty-six	"	.....	(36)
Antoine Barada	" seven	"	.....	(7)
Michael Conrad	" twenty-seven	"	.....	(27)
Joseph Guion	" twenty-three	"	.....	(23)
George F. Eichelberger	" twenty-eight	"	.....	(28)
Joseph Constant	" twenty-one	"	.....	(21)
Louis L. Blond	" twenty	"	.....	(20)
Thomas Chartrand	" one	"	.....	(1)

Certified to under our hands and seals this 7th day of April, 1845.

LOUIS GUION. [SEAL.]
PETER D. BARADA. [SEAL.]
HAMILTON MECHAU. [SEAL.]

Attest:
PATRICK TIERNAN.

STATE OF MISSOURI,
City of Carondelet, ss:

I, A. L. Bergefelt, register of the city of Carondelet, do hereby certify that the foregoing extract from poll-books of the election of trustees of the town of Carondelet are correctly copied from the poll-books now on file in my office as belonging to the archives of the late town, now city, of Carondelet; and that the figures opposite the name of Thomas
128 Chartran, or Chartrand, designate the number of his vote in the list of names given as voters at the respective elections.

In testimony whereof I have hereunto set my hand and affixed the corporate seal of said city this twenty-eighth day of September, A. D. eighteen hundred and sixty-five.

[SEAL.] A. L. BERGFELT,
Register.

Affidavit of Henry Beard.

THE DISTRICT OF COLUMBIA,
County of Washington, ss:

Before me, Edward F. Brown, a notary public within and for said

county and District, this 24th day of February, A. D. 1866, personally appeared Henry Beard, of said District, of lawful age, who, being first duly sworn, deposes and says that about the first August last he was retained by Wm. M. McPherson in a case pending before the Secretary of the Interior, wherein the heirs of Thomas Chartrand claimed to make an entry by pre-emption of a certain parcel of land described as fractional sec. 9., Tp. 44 N., R. 7 E., St. Louis dist., Mo.; that between the 30th July & 5th August he spent nearly all of three days in a very thorough examination of the papers in said case (with the leave of the Secretary of the Department) and took very full notes; there were no papers on the files of the case that he did not examine, and he read all the papers except where he found duplicates; that he found copies of several papers which he examined sufficiently to be certain that they were copies, after which, if he had not before done it, he thoroughly examined the originals; that he examined carefully certain original depositions taken before one Thomas W. Levant at Caron-
129 delet, commencing May 9th, 1862, among which, in the same package or attached thereto, is a deposition of said Levant, taken before C. L. Hamm; that his attention was particularly attracted by said deposition of Levant because sworn to before Hamm, and more fully to assure himself of its contents he returned to said Department two or three days after such first examination and examined it. At or upon one of these occasions he took notes of the contents of said deposition, which notes are hereto attached.

About the 15th to 20th August, 1865, Hon. Thos. Ewing, jr., called upon me at my office and informed me that he had been retained by Morgan & Co. in the same case, and with me, and some conversation about it and the evidence and law therein ensued. He asked me if I had observed an alteration that had been made in the deposition of Levant, and a marginal note in red ink. I said I had not. I could not reconcile my mind to the conviction that anything important had escaped my notice. A day or two afterward I met Mr. Ewing in the land-room of the office of the Secretary of the Interior. He was engaged still in examining the papers in that case, and showed me Levant's deposition. On looking at it I found that an alteration had been made therein since I had last seen it; that "1844" had been changed to "1841," and a note in red ink attached on the margin. The figure 1 appeared to have been made with fresh ink and was not at that time of the same hue as the other letters.

I am very positive in the recollection and belief that the original figures stood "1844." I am still more positive in the recollection that the note in red ink was not on said deposition when I first saw the deposition, or the second time I referred to it.

I esteemed the change a very material one, prejudicial to the interests of my client, and all the circumstances became fixed in my mind. I do not know the handwriting or who made the alteration, or the note
130 thereto, in red ink. I have no knowledge of the matter except of the fact that the alterations mentioned were made between the time I saw the deposition the second and third times. A period of ten or twelve days intervened between the second time I examined said deposition and the third time I saw it.

And further deponent saith not.

The original notes of the depositions referred to, which notes were made as above stated, are hereto attached.

HENRY BEARD.

Sworn to and subscribed before me this 24th day of February, 1866.
[SEAL.] EDWIN F. BROWN,
Notary Public.

[Stamp cancelled.]

I have read the foregoing, and believe it correct. The alteration of 1844 to 1841 in Levant's testimony was evidently a very recent one when I called Mr. Beard's attention to it as above stated, as the figure 1 was in apparently fresh ink, the rest of the figures looking much darker and older.

I have called the attention of the Sec'y of the Int. to this mutilation of the record in my printed brief, p. 14, Feb'y 23, '66.

THOMAS EWING, JR.

Testimony taken before me, Thos. W. Levant, at office in Carondelet, commencing Friday, May 9th, 1862, under an appointment of the register and receiver of the land-office at Boonville, Mo., of Apl. 29, 1862.

ANTOINE MATEER:

Nothing variant from his regular testim. except: "I heard that
131 Mr. Thos. Chartrand had applied at the land-office in St. Louis for a pre-emption right to said tract of land on or about the year 1834."

Mrs. MARY HUSTON:

Aged 69. Thos. C., senr., owned and resided on fract. sec. 9. The twins were born at the residence of their father on said land. They are now 27 years old.

That he continued possession of the land, and a short time previous to his death he was preparing to build himself a new residence on said tract; that he resided on said land and had possession at the time of his death, and after his death Thos., jr., resided upon said land; claims for himself and the other heirs of Thos. C., deceased; said C., jr., moved off about 1849.

VIRGINIA LEFFLER, (similar to her other test.)
MICHAEL CHARTRAND, " "

THOS. W. LEVANT:

Aged 75; became acquainted with Chartrand, sen'r, in 1841. He had imp'ts, & was cultivating said f'l sec. 9. In 1844, C., sen., "showed me a certificate of rgr. of the land-office at St. Louis of his intention to claim said tract under the pre-emption laws." Says C. & his heirs "claimed, owned, & possessed the tract from 1841 to 1862, May."

Affidavit of Michael Chartrand.

COUNTY AND CITY OF ST. LOUIS,
State of Missouri, ss:

132 This day personally appeared before me, a notary public duly commissioned within and for the county and State aforesaid, Michael Chartrand, who is personally known to me, and states that J. Epps Cowan, esqr., of Jefferson County, Missouri, was employed by the heirs of Thomas Chartrand, sr., to conduct and investigate their claim for the pre-emption right of the frac. sec. 9, T. 44, R. 7 E.

He further states that the said J. Epps Cowan, esqr., was the only agent, atty., or person authorized by the said heirs to establish their said claim; that on the 23rd of September, 1862, after closing the testimony of Surveyor Cozens, (which appears in evidence,) Mr. Coleman, who was employed by Mr. Cowan to assist him in taking the depositions in the case before Commissioner B. F. Hickman, & Mr. McPherson, the adverse claimant, agreed to close the case. Mr. Cowan being present and conducting the examination, assisted by Mr. Coleman, immediately objected & refused his consent to closing the testimony in the case. Afterward, Mr. McPherson and Mr. Cowan mutually agreed to continue the taking of testimony in the case until both parties should exhaust or examine all the witnesses they desired, and thereafter the commissioner did proceed to take the testimony of Mrs. Leffler and Mr. Ivory, Mr. McPherson and Mr. Cowan both being present and examining the witnesses.

Mr. Cowan in my presence denied to Commissioner Hickman that Mr. Coleman or any one else was authorized to close the evidence, and that he alone was to determine when it should be closed; and that Mr. Coleman has not appeared in the case since the examination was resumed, and Mr. Cowan alone conducting the case.

MICHAEL CHARTRAND.

STATE OF MISSOURI,
County of St. Louis, ss:

133 Sworn to and subscribed before me this 13th day of October, A. D. 1862.

[SEAL.] PHILIP C. MAURO,
Notary Public of St. Louis County, Missouri.

Affidavit of Antoine T. Chartrand.

I, Antoine T. Chartrand, one of the heirs of Thomas Chartrand, sr., deceased, aged twenty-seven years, do solemnly swear that Thomas Chartrand, sr., to the best of my knowledge and belief, entered upon fractional section nine (9) of township No. forty-four north, (44 north,) of range No. seven east of the fifth principal meridian, in the State of Missouri, at that time (about the year 1831) subject to sale at the United States land-office in St. Louis, Missouri, in his own right, and exclusively for his own use and benefit; and that he has not, directly or indirectly, made any contract or agreement, in any way or manner, with any person or persons whatever by which the title to the land which he might have acquired from the Government of the United States, by virtue of said settlement, under the law of 22nd June, 1838, or that of 19th Jan., 1834, or any of the other pre-emption laws of the United States, should inure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he might have acquired to the same, to any other person or persons whatever at any subsequent time.

A. F. CHARTRAND,
One of the heirs of Thomas Chartrand, senior.

Sworn to and subscribed before me this 12th day of April, A. D. 1865, at St. Louis, Missouri.

Witness my hand and official seal.

[SEAL.] S. W. EAGER, JR.,
Clerk St. Louis County Court.

[5-cent stamp cancelled.]

Oath of loyalty of Michael Chartrand.

I, Michael Chartrand, do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will
134 bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God.

MICHAEL CHARTRAND. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Sworn and subscribed to before me this twelfth day of April, 1865. Witness my hand and official seal at St. Louis.

[SEAL.] S. W. EAGER, JR.,
Clerk St. Louis County Court.

[5-cent stamp.]

Joseph Chartrand's oath of loyalty.

I, Joseph A. Chartrand, one of the heirs of Thomas Chartrand, sen., do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State constitution or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God.

JOSEPH A. CHARTRAND. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Sworn and subscribed to before me this thirteenth day of April, 1865. Witness my hand and official seal at St. Louis.

[SEAL.] S. W. EAGER, JR.,
Clerk St. Louis County Court.

[5-cent stamp.]

135 *P. F. Chartrand's oath of loyalty.*

I, P. F. Chartrand, one of the heirs of Thomas Chartrand, sen'r, do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State constitution or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God.

P. F. CHARTRAND. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Sworn and subscribed to before me this 6th day of May, 1865.

[SEAL.] S. W. EAGER, JR.,
Clerk County Court St. Louis County,
Per F. C. SCHWENTHALER, *D. C.*

[5-cent stamp.]

(Here follows the oath of loyalty as taken by Antoine T. Chartrand before S. W. Eager, jr., clerk St. Louis County court, April 12th, 1865; the form same as above.)

Register's certificate of purchase by Thos. Chartrand's heirs.

No. 39482.] LAND-OFFICE AT BOONVILLE, MO.,
June 16th, 1866.

It is hereby certified that, in pursuance of law, the heirs of Thomas Chartrand, deceased, of St. Louis County, State of Mo., on this day purchased of the register of this office the lot or fractional section No. 9, in township No. 44, of range No. 7 E., containing 37.40 acres, at the rate of one dollar and twenty-five cents per acre, amounting to forty-six dollars and seventy-five cents, for which the said heirs of
136 Thos. Chartrand, deceased, have made payment in full, as required by law:

Now, therefore, be it known that on presentation of this certificate to the Commissioners of the General Land-Office the said heirs of Thos. Chartrand, deceased, shall be entitled to receive a patent for the lot above described.

GEO. W. BOARDMAN,
Register.

(Endorsed:) 39482. Boonville, Mo. Rec., vol. 77, page 243. Pat'd July 21st, 1866. Ex. Approved and filed for patenting July 21st, 1866. Heaton. See Secretary's decision of June 4th, 1866. Pre. dir., 2, 127. To be made a special case by order of Commr.

Receiver's receipt.

No. 39482.] RECEIVER'S OFFICE AT BOONVILLE, MO.,
June 16th, 1866.

Received from Antoine F. Chartrand, of St. Louis County, Missouri, forty-six dollars and 75 cents, being in full for the fractional section No. 9, in township No. 44, of range No. 7 east, containing 37 acres and 40 hundredths, at $1.25 per acre.

$46.75.] JOHN S. McFARLAND,
Receiver.

Receiver's receipt and request to issue patent.

No. 39482.] RECEIVER'S OFFICE AT BOONVILLE, MO.,
June 16th, 1866.

Received from Antoine F. Chartrand, of St. Louis County, Missouri, the sum of forty-six dollars and 75 cents, being in full for the fractional section No. 9, in township No. 44, of range No. 7 east, containing 37 acres and 40 hundredths, at $1.25 per acre.

$46.75.] JOHN S. McFARLAND,
Receiver.

(Written across the face:)

ST. LOUIS, *June 21st*, 1866.

Com'r G. L. O.:

Please issue patent under pre. act of 1841, & send to

S. M. COLEMAN,
St. Louis.

(Duplicate.)
(Endorsed:) "Patent sent to Sam'l V. Niles July 23, '66."

137 *Patent.—United States to Chartrand heirs.*

Certificate No. 39482.

The United States of America to all to whom these presents shall come, greeting:

Whereas the heirs of Thomas Chartrand, deceased, of St. Louis County, Missouri, have deposited in the General Land-Office of the United States a certificate of the register of the land-office at Boonville, whereby it appears that full payment has been made by the said heirs of Thomas Chartrand, deceased, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for fractional section nine in township forty-four of range seven east, in the district of lands subject to sale at Boonville, Missouri, containing thirty-seven acres and forty-hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land-Office *of* the surveyor-general, which said tract has been purchased by the said heirs of Thomas Chartrand, deceased:

Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, hath given and granted, and by these presents do give and grant, unto the said heirs of Thomas Chartrand, deceased, and to their heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said heirs of Thomas Chartrand, deceased, and to their heirs and assigns, forever.

In testimony whereof I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent,
138 and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-first day of July, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninety-first.

By the President, ANDREW JOHNSON,
[L. S.] By EDW. D. NEILL, *Sec'y.*

Recorded vol. 77, page 243. Examined.

J. N. GRANGER,
Recorder of the General Land-Office.

To each and all of said papers and proceedings, testimony and evidence, these defendants at the time objected for the reasons that the same were incompetent and irrelevant; but the court overruled the

same, and these defendants then and there objected and excepted, and the said exhibit No. 9 was then read in evidence to the court.

Plaintiff then offered and read in evidence to the court Exhibit or Bundle B, containing as follows:

1st. Decision of J. M. Edmunds, Commissioner of the General Land-Office, dated March 22nd, 1865, as follows:

Decision of Edmunds, Comr. Genl. Land-Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE.
March 22nd, 1865.

REGISTER AND RECEIVER, *Boonville, Mo.:*

GENTLEMEN: On the 20th November last your report of the
139 heirs of Thomas Chartrand claiming a pre-emption right to fractional sec. 9, township 44 north, range 7 east, in your land district, formerly the St. Louis district. The fractional section, containing 37.40 acres, is bounded on the north by James C. Brown's survey, No. 3125, of St. Louis common, executed in 1831; on the west by Elias Rector's survey, No. 3103, Carondelet common-fields; on the south by Rector's survey, No. 3102, of Carondelet common, and on the east by the Mississippi River. Rector's surveys were executed in 1816 or 1817, and the lines were retraced by Brown in 1834. No official plat of these surveys were received in St. Louis, however, before 1842, and none in Washington before 1850. Prior to 1850 the only plat of this township in the General Land-Office represented the lines of an imperfect survey made in 1821. In this plat the St. Louis and Carondelet commons had a common boundary-line.

The existence of a fractional section of public land lying between these commons was first intimated to this Office by a letter from the St. Louis land-officers announcing that Peter Delor had filed a pre-emption declaration for the land, July 22, 1847, alleging settlement the same day, and offering proof two days thereafter that he had built a cabin there and slept in it one night, his family residing elsewhere.

His application to enter was very properly rejected by the district officers, and their action was approved by the Commissioner, who referred at the same time to his predecessors' decision not to interfere with Rector's surveys.

On the 9th of January, 1850, Secretary Ewing referred to the
140 General Land-Office a communication from Governor King, of Missouri, announcing the selection of this fractional section by Wm. M. McPherson on behalf of the State, in lieu of 320 acres under the act of 4th September, 1841. A township plat filed with this letter, and copied according to the surveyor-general's certificate from a plat approved 3d August, 1839, showed that fractional section 9 was indeed public land, bounded by the surveys already mentioned and by the Mississippi River. Accordingly, on the recommendation of Commissioner Butterfield, the selection was approved by the Secretary of the Interior 17th January, 1850, subject to any right which may have existed at the time the same was made known to the land-officers by the agent of the State. The selection bears date on the tract-book in this office December 15th, 1849, the date of Governor King's letter to the Secretary. McPherson's title is therefore subject to any right which might have existed at that time.

On the 20th August, 1851, the Secretary of the Interior referred to the General Land-Office ex-parte affidavits filed by Mr. F. P. Blair, coun-

sel for the heirs of Thomas Chartrand, in support of a motion that the pre-emption claim of their clients be referred to the district office for examination. These affidavits showed that Thomas Chartrand, senior, having purchased the claim of a former settler at some time subject to 1830, had leased fractional section 9 in 1834, taken up his residence on the land in 1835, and maintained possession thereafter till his death, in 1845; that his heirs remained in possession, and had attempted in 1846, and again in 1850, to make proof and enter the land, but had been prevented by the district officers.

141 A report on the status of the land was called for by the Secretary and sent up 31st of December, 1853; the case was returned for further examination 24th March, 1854; a report substantially identical with the report of 1853 was subsequently made; and finally, on the 10th December, 1860, Secretary Thompson remanded the whole matter to the General Land-Office, declining to take any action.

In July, 1861, the St. Louis land district was discontinued, and the business of that office was transferred to Boonville. On the 26th of the following November you were directed "to take the proof again in Chartrand's pre-emption claim."

The affidavits filed in 1851 had been mislaid, and their exact character could no longer be determined. It is evident, however, from the tenor of this order, requiring ample notice to be given to all parties interested, that it contemplated not merely a repetition of the former ex-parte testimony, but a formal and thorough examination of the pre-emption claim. This is what the counsel of the heirs had reasonably asked, in order that they might come before the court, not as trespassers, as the law regards them until their pre-emption right is proved, but as parties entitled to question the validity of the State location.

The intention of this Office is put beyond question by the order addressed to you 14th November, 1862, after the discovery of missing papers to report, not immediately, but "when the testimony is concluded."

With the testimony you have sent up two deeds are filed, both executed 28th June, 1850, and witnessing that on that day Wm. M. McPherson and Mary A., his wife, conveyed to Thomas Chartrand,

142 jr., and to Peter Delor four arpents apiece of the land in dispute in consideration of eight dollars by each purchaser paid, and that the said Chartrand and Delor on the same day relinquished all claim to the remainder of the section. This transaction is conclusive upon Delor, who must henceforth hold under McPherson, if at all.

The act of Chartrand, however, though it would have been fatal to any pre-emption claim of his own, could not disturb the right established by his father while still living. He does not even claim to act in the name of the heirs. His relinquishment of title, therefore, was at any rate only binding upon himself, and these documents, if they are to have any weight in the present controversy, must rather be regarded as conceding the validity of the Chartrand claim.

Several other deeds are filed showing that a claim to fractional section 9, together with certain undescribed lots in the St. Louis common, has been repeatedly disposed of for a consideration, and was finally purchased by McPherson in 1848.

This claim rests so far as section 9 is concerned upon the alleged settlement of one St. Armand Mechau, who appeared to have lived upon the land from some time in 1844 till his death in 1845. The preponderance of testimony goes to show that Mechau's family never resided with him on this tract, and it is conceded that he never perfected any title thereto. Any claim founded upon his occupation of the land is therefore wholly

invalid as against the United States, and McPherson's right attaches only from the date of the State selection.

The testimony in support of the Chartrand claim was taken in part before Justice Levant at Carondelet. As it was there stated by Delor, who was present, that McPherson was accidentally detained on his way thither, you were instructed under date of May 26th, 1862, that
143 the examination, after ample notice to all concerned, should be "further pursued;" and at a subsequent hearing in St. Louis before Commissioner Hickman all the witnesses who testified at Carondelet, except Mrs. Huston, were produced and subjected to cross-examination, and ample opportunity was offered for the introduction of counter-proof. It was further satisfactorily shown that Mrs. Huston was unable to appear at St. Louis, or even at the office of Justice Levant, her deposition having been taken at the house to which she was confined by infirmity. This testimony was properly received.

You are instructed where by reason of distance, sickness, or infirmity witnesses cannot appear before you, to receive their depositions, and the same instructions are of course binding upon officers who are appointed in special cases your representatives.

The testimony of Antoine Motier shows Thomas Chartrand, senior, bought the claim of one Barada to fractional section 9, about 1831; that a house had been built and about two acres had been cultivated by Barada; that on the 1st of January, 1834, Chartrand leased the place to witness, who peacefully held under him for a year, and that some time about 1834 he understood Chartrand had sought to prove up, under the pre-emption law of the 19th of June of that year; whether the information was derived from Chartrand himself, or from others, the witness could not remember. The probability that such application was made is heightened, however, by the fact that in March, 1834, the lines of Rector's survey were retraced, showing that this fractional section was public land rightfully subject to pre-emption. The proof required under the act of 1834 was very simple: proof of cultivation in 1833 and possession at the date of the law.

Martier testifies that about two acres had been under cultivation and were cultivated by him in 1834. It is not directly
144 in evidence, however, that Chartrand cultivated the land in 1833, though all the circumstances favor the supposition. The fact of possession the 19th of June, 1834, is established on the principle adopted as a rule of this Office, and published by circular 23rd October, 1834, that where A cultivated a tract of public land in 1833 and placed B thereon as tenant in possession, who continued to improve and cultivate the same on 19th June, 1834, A is regarded as entitled to the right of pre-emption.

Martier further testifies that at the expiration of his lease he resigned the possession of the land to Chartrand, who thereupon took up his residence there. Mrs. Huston deposes that Chartrand's twin sons, Felix and Paschal, were born at their father's residence upon the land in 1835.

Mortier refers vaguely and uncertainly to the removal of the family, he cannot tell when, perhaps after two or three years, to Carondelet. This absence must have been of a temporary character, not calculated to invalidate*d* the pre-emption right, since Mrs. Leffler, who came to Carondelet about 1836, does not appear to be aware of it. Mrs. Leffler testifies that in 1839 or 1840 her husband moved into the house with Chartrand, and clearly identifies the site on section 9. She also testifies that Chartrand was living in this house before and after her residence there. It appears, then, that he might have established a pre-emption

claim under the act of 1838 as an actual settler, the head of a family, a housekeeper, and in possession by personal residence on the 22nd of June, 1838, and for four months next preceding.

Mrs. Leffler's testimony to his residence on the land before 1839 or 1840, though indefinite, must still, in the absence of counter-proof, be allowed to cover at least the year 1838.

145 This land has never been offered at public sale. By the provisions of the supplemental act 1st June, 1840, therefore, Chartrand's claim would have been valid if proven up and entered at any time prior to the 22d of June, 1842. Although the land had been surveyed in 1816 or 1817, and the same lines retraced in 1834, the plat was not returned to the district office till the 18th of April, 1842. As in the opinion of Attorney-General Butler, cited in the circular of 17th July, 1838, an act reviving the act of 1830 revived also the amendatory act of 14th July, 1832, which was accordingly operative under the pre-emption law of 1838, it follows that Chartrand's application should have been received at any time within a year after the approved plat was filed in the land-office at St. Louis; that is, at any time prior to the 18th of April, 1843.

The witnesses Mortier and Huston both testify to a common report that Chartrand had taken measures to perfect his title. The witness Michael Chartrand swears positively that he has seen two "certificates" in his father's possession, one bearing date prior to 1840, the other 1841 or 1842. He also testifies that when the latter was issued he accompanied his father to St. Louis with witnesses, two of whom he names, to prove the pre-emption right. The certificates named are lost, but Justice Levant in his affidavit sent up with the other testimony swears that in the fall of 1841 Thomas Chartrand, sr., showed him a certificate of the register of the land-office at St. Louis of his intention to claim the land under the pre-emption laws of Congress. The exact purport of the certificate can only be conjectured, but it is clear that in 1841 the elder Chartrand made a second attempt to prove his pre-emption and receive same written evidence of the fact. The mere absence of proof on the official files cannot outweigh this positive

146 testimony. No declaratory statement was required under the act of 1838. The district officers may have made no record of the rejected application, and the memorandum, if made, may have been lost with other papers from the land-office during the great fire at St. Louis in 1849.

Mr. McPherson's objection to receiving the testimony of Michael Chartrand is overruled in view of the fact that this witness claims to have disposed of his interest in the land and the claim was admitted without contradiction.

It being established, then, that within the time allowed by law more than one attempt was made to prove up and enter, it was unquestionably the duty of the district officers to receive the proof.

The applications may have been made, as one of them certainly was, before the approved plat of survey was returned. Nevertheless, these officers had been instructed as early as 1831 by the circular of 7th February of that year that "in all cases where individuals residing on public lands which shall have been surveyed are unable to avail themselves of the benefit of the pre-emption law by reason of the township plats not having been furnished by the surveyor-general to the register of the land-office, the parties entitled to the benefit of said act may be permitted to file the proof thereof." No payments were to be received, however, except in cases (like Chartrand's) where the plat was subsequently filed within the period of the operation of the law, when

the payment was to be made and receipts and certificates of purchase issued as usual. These instructions were in force under the act of 1838, reviving the act of 1830.

It is not in evidence that Mr. Chartrand made any claim under
147 the act of 4th September, 1841. Decisions going to show that he might have done so are very numerous, though the act was designed primarily for the benefit of settlers whose right originated after the first of June, 1840. The concurrent testimony shows that he remained in possession of the land till his death in 1845, and was then prosecuting his improvements, having collected materials for a new house, afterwards built and inhabited by Thomas Chartrand, junior, his son and executor.

Through the lapse of time, probably, the evidence of the elder Chartrand's right, under the act of 1834, is no longer quite satisfactory. The heirs have shown, however, that their father was justly entitled to the privilege of pre-emption under the act of 1838; that he made seasonable efforts to perfect his title, but was prevented by the district land-officers, and that since his death they have neglected no means to establish their claim. The testimony which they have submitted exhibits that agreement in essential particulars and that variation in unimportant details which have ever been regarded as the most satisfactory evidence of truthful intention. Your decision in their favor is therefore affirmed.

You will now call upon one of the heirs to make payment, and take the affidavit (Form A, annexed to circular of 8th May, 1843) required by the act of 3rd March, 1843, in cases under the act of 1838, where the settler shall have died before proving up and entering his claim. You will also call upon each of the heirs to file with you the oath of allegiance required by circular of 6th January, 1862. Thereupon issue receipts and certificates of purchase as usual, and send up all the papers in a special letter, referring to the date of these instructions. You will notify Mr. McPherson of this decision, giving him
148 thirty days from the date of your notice for an appeal to the Secretary of the Interior. At the expiration of that time, if no appeal is taken, you will please report.

Respectfully.

J. M. EDMUNDS,
Commissioner.

Decision of Harlan, Sec'y of Interior.

2nd. Decision of the Secretary of the Interior, James Harlan, dated June 4th, 1866, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 4th, 1866.

In the matter of the pre-emption claim of Thomas Chartrand's heirs vs. Wm. M. McPherson for fractional section nine, township forty-four, range seven east, St. Louis district, now Boonville, Mo.

After a careful and thorough examination of the evidence and the arguments of counsel in this case, I am clearly of the opinion that the applicants have shown that their father was justly entitled to the privilege of pre-emption under the acts of 1838 and 1840; that he was prevented from proving up such claim by the reservation of the land from sale by order of the Commissioner of the General Land-Office, and

that, since his death, his heirs have made reasonable efforts to establish said pre-emption claim. It follows, therefore, that the decision of the Commissioner of the General Land-Office, approving the report of the local land-officers at Booneville, Mo., in favor of said heirs, must be, and the same is hereby, affirmed.

JAMES HARLAN,
Secretary.

COM'R GEN'L LAND-OFFICE.

149 *Letter of instructions from Edmunds' land-office to register & receiver at Boonville, Mo.*

3rd. Letter of instruction from J. M. Edmunds, Commissioner of Land-Office, to the register and receiver at Boonville, dated June 5th, 1866, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
June 5th, 1866.

REGISTER AND RECEIVER, *Boonville, Mo.:*

GENTLEMEN: In the matter of the contested case of Thomas Chartrand's heirs vs. W. M. McPherson for frac. sec. 9, T. 44, R. 7 E., St. Louis dist., now Boonville, Mo., I have to inform you, the Hon. Sec. of the Interior has this day returned the papers in the case, affirming the decision of this Office dated March 22d, 1865, in favor of the heirs. You will, therefore, upon receipt of this communication, proceed to carry out the instructions of any such decision of March 22d, 1865, viz: "You will now call upon one of the heirs to make payment & take the affidavit (Form A, annexed to circular of 8th May, 1843) required by the act of 3rd March, 1843, in cases under the act of 1838, where the settler shall have died before proving up and entering his claim."

Enclosed you will find copy of pre-emption instructions. Your attention is particularly directed to Form A, page 31.

Respectfully,

J. M. EDMUNDS,
Commissioner.

150 [31] [Form A.]

Affidavit to be filed in cases (under act 22nd June, 1838, or 1st of June, 1840) where the settler shall have died before proving up and entering his claim.

I, A B, (executor of the estate of P D, or administrator of the estate of C D, aged years, as the case may be,) do solemnly swear (or affirm, as the case may be) that the said C D, to the best of my knowledge and belief, entered upon the quarter of section number of township number of range number , subject to sale at , in his own right, and exclusively for his own use and benefit; and that he has not, directly or indirectly, made any contract or agreement, in any way or manner, with any person or persons whatever by which the title to the land which he might have acquired from the Government of the United States by virtue of said settlement under the law of 22d June, 1838, (or 1st June, 1840, as the case may be,) should inure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he might have acquired to the same, to any other person or persons whatever, at any subsequent time.

A B, *Executor of the Estate of C D,*
(or *Administrator of the Estate of C D,*
or *One of the Heirs of C D,* as the case may be.)

Sworn to and subscribed before me this day of , A. D. 18 .
E F, *Register*. Or
G H, *Receiver*. Or
J K, *Justice of the Peace*.

151 *Letter from Watson, register at St. Louis, to Com'r R. M. Young.*

4th. Letter from Thomas Watson, register at St. Louis, to Richard M. Young, Commissioner of General Land-Office, dated 27th July, 1847, as follows:

LAND-OFFICE, ST. LOUIS, MO.,
REGISTER'S OFFICE, *July 27th*, 1847.

SIR: On the 22nd inst. Peter Delor, at St. Louis County, Mo., made an application and filed in this office a pre-emption declaratory statement claiming the right of pre-emption to fract'l sec. 9, T. 44, R. 7 E, containing 37.40 acres, upon which he stated he had commenced a settlement on that day. This tract, embraced in survey No. 3102, is claimed by the inhabitants of *of* the town of Carondelet, as appears by a note on the plat furnished this office by the surveyor-general on the 18th Apr., 1842, and adjoins the St. Louis commons on the south, according to survey No. 3110.

In consequence of the claim thus preferred, this fraction has been reserved from sale until the question of title should be determined. My predecessors refused to dispose of it in any way, and I conceived it would be a violation of duty on my part were I to act otherwise in regard to the application of Mr. Delor. Entertaining this view of the subject, I informed the applicant that I was not at liberty to acknowledge any act of his in relation to this land as investing with the right to enter it by pre-emption or otherwise, and that in receiving his application I was performing an act of courtesy and not an official duty.

On the 24th, two days subsequent to the presentation of his
152 declaratory statement, Mr. Delor appeared accompanied by two persons whose testimony he requested me to take in relation to his having made a settlement upon the land referred to.

They accordingly testified before a magistrate in my presence that the applicant had erected a cabin on this tract, in which he had slept one night, but into which he had not moved his family, who were still at the applicant's home or usual place of residence.

This testimony I was requested to file. A few hours after, Mr. Delor, accompanied by two or three friends, desired me to permit him to make the affidavit prescribed by the 13th sec. of the act of 4th Sept., 1841, an oath taken only in cases where the applicant has proved to the satisfaction of the register and receiver that he has complied with the provisions of that act and is entitled to an entry of the land claimed.

This I refused to do for the following reasons.

1st. The tract in question, not being subject to pre-emption, could not be entered even had Mr. Delor satisfactorily proved, which he had not done, that he had made a settlement in conformity with the act 4th Sept., 1841.

2nd. Because the affidavit taken by pre-emption claimants gives to the person making it the right to enter, which right would not under the circumstances be acquired by Mr. Delor to the land claimed by him.

I was next required to state in writing that I had refused to administer the oath referred to. To this also I objected, informing Mr. Delor that as the propriety of my course in this case was questioned by himself and the friends who interposed in his behalf, I would, for their

mutual gratification, report my proceedings in the case to the General Land-Office and inform them of its decision.

153 I beg leave, therefore, to request that I may be favored with an early reply to this communication.

I am, sir, very respectfully, your obedient servant,

THOS. WATSON, *Register.*

Hon. RICHARD M. YOUNG,
Com'r General Land-Office.

Letter Com'r Young to Watson.

5th. Letter of Richard M. Young to Thomas Watson, date 6th of August, 1847, as follows:

GENERAL LAND-OFFICE, *Aug't 6th*, 1847.

REGISTER, *St. Louis, Missouri:*

SIR: Your letter of the 27th ult. in reference to the action had by you on the application of Peter Delor for a pre-emption under the act of 4th Sept., 1841, to f'l. sect. 9, T. 44 N., R. 7 E, has been received.

This Office possesses no official plat indicating the existence of any tract of public land of the description above given, your letter in reference to the above claim to such a tract being the first intimation received that any land in said township, in the local position of frac'l sect. 9 had been delineated by the surv. gen'l on any plat otherwise than as claimed as or belonging to Carondelet common.

From your letter it appears that you refused to allow this pre-emption claim of Delor because of the reservation of the land for said Carondelet common, your predecessors having for like reasons refused to dispose of it any way. Your action in this respect is

154 approved, and for the reasons given by you a refusal to entertain the claim at all, even impliedly, to the extent reported, would have been equably tenable and more proper.

The claim (independent of the vital objection that it could not be legally made to reserved land) appears from the facts in regard to the nature of the settlement (reported by you as exhibited by the testimony filed) to be devoid of any merits.

Respectfully, your ob'd't serv't,

RICHARD M. YOUNG,
Comm'r.

GENERAL LAND-OFFICE, *January 23rd*, 1867.

I, Joseph S. Wilson, Commissioner of the General Land-Office, do hereby certify that the annexed copies are true and literal exemplifications from the files and records of this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JOS. S. WILSON,
Commissioner of the General Land-Office.

Testimony of Hiram Paddleford.

Plaintiff then called HIRAM PADDLEFORD, who testified as follows:

(Paper shown to witness.) "This is my signature."

Ques. Did you have possession of fractional section nine under this lease?

Ans. I did in the year *in the year* 1847 or 1848. The whole of the section was enclosed running out to the Stringtown road. I had it fenced for Mr. Cowles in 1847—fence went from line near to the
155 Stringtown road; my line near the road might be fifty yards from it, and the fence was on the north and south line. I turned the land over to McPherson or D. C. Tuttle; this was in 1848. I know that Tuttle was in possession 3 or 4 years after me. There is a person living there now. When this lease was made I was living in the same house the lease was made. I had lived in the neighborhood 10 or 12 years, and 3 or 4 years afterwards.

Cross-examination:

The fence was of cedar posts and of board; there was five boards to a panel. One part of the tract was east, and the other west of the road. I don't know whether Thomas Chartrand had a house east of the road or not. Delor had an improvement east of the Stringtown road near the river. I helped build this fence, and it was either in 1847 or 1848.

Redirect:

The fence with the cedar post' was built before I took the lease.

Recross-examination:

I turned cows into this land both east and west of the old Carondelet road. Lease is dated 8th March, 1848, and is for the whole of fract. sec. 9.

Lease to Paddleford.

156 Plaintiff then offered and read in evidence pre-emption instructions issued from General Land-Office, Nov'r, 1860, C 2, as follows:

157 *Pre-empt'n ins., Nov.*, 1860.

Circulars to registers and receivers of the United States Land-Office.

GENERAL LAND-OFFICE,
September 15, 1841.

GENTLEMEN: Annexed is a copy of that portion of an act of Congress, approved on the 4th instant, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," which has relation to the subject of pre-emptions. Your attention is directed to the several provisions of that portion of said act, and your observance enjoined of the rules hereinafter stated, as prescribed by the Secretary of the Treasury in accordance with the 12th section of said act.

The individual claiming the benefits of said act must be—

First. A citizen of the United States, or have filed his declaration of intention to become a citizen.

Second. Either the head of a family, or a widow, or a single man over the age of twenty-one years.

Third. An inhabitant of the tract sought to be entered, upon which in person he has made a settlement and erected a dwelling-house* since the 1st of June, 1840, and prio r to the time when the land is applied for,

* Where a dwelling-house has been previously built it is not necessary to erect another house to entitle a claimant to pre-emption. See Secretary's decision 6th November, 1858, case of Sapp vs. Friley. (Lester's Land Laws, &c., page 104, No. 458.)

which land must, at the date of the settlement, have had the Indian title extinguished and been surveyed by the United States.

A person failing in any one of these requisitions can have no claim by virtue of this act.

A person bringing himself within each of the above requirements by proof satisfactory to the register and receiver of the land-district in which the lands may lie, taken pursuant to the rules hereinafter
158 prescribed, will, after having taken the affidavit required by the act, be entitled to enter, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter-section, to include his residence, and he may avail himself of the same at any time prior to the day of the commencement of the public sale, including said tract where the land has not yet been proclaimed.

Where the land was subject to private entry at the date of the settlement made since the 1st of June, 1840, and prior to the passage of this act, and the settler is desirous of securing the same under this act, he must give notice of his intention to purchase the same under its provisions within three months from the passage of the law; that is, before the fourth day of December next.

Where the land was subject to private entry at the date of the law and a settlement shall thereafter be made upon such land, or where the land shall hereafter become subject to private entry and after that period a settlement shall be made which the settler is desirous of securing under this act, such notice of his intention must be given within thirty days after the date of such settlement. Such notice in both (all) cases must be a written one, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act. (See Forms A and B hereto annexed.) In the first case the proof, affidavit, and payment must be made within twelve months after the passage of this act, and in the second place within twelve months after the date of such settlement. These declaratory statements are to be regularly numbered by the register, in the order of the date of their reception, and entered in a suitable book, columned off to show the number, date when received, name of the party, and description of the tract claimed; and monthly abstracts of the same are to be furnished to the General Land-Office with your other monthly returns. The exist-
159 ence of these claims should be indicated on the township-plats by marking with red ink a cross (+) on the spot occupied by the tract claimed; and also with red ink noting on the same spot the number of the declaratory statement in neat and very small figures, so as not too much to interfere with the regular annotations which will have to be made when the regular proof and payment shall have been made by the claimant and his entry of the tract consummated. The existence of such claims should also be noted, in pencil, in their appropriate places in the tract-books.

The tracts liable to entry under this act are some one of the following designations:

First. A regular quarter-section, notwithstanding its quantity may be a few acres more or less than one hundred and sixty, or a quarter-section which, though fractional in quantity by the passage of a navigable stream through the same, is still bounded by *a* regular sectional and quarter-sectional lines.

Second. A fractional section containing not over one hundred and sixty acres, or any tract being a detached or anomalous survey made pursuant to law and not exceeding said quantity.

Third. Two adjoining half-quarter-sections (in all cases to be sepa-

rated by a north and south line, except on the north side of townships where the surveys are so made as to throw the excess or deficiency on the north and west sides of the township) of the regular quarters mentioned in the first designation; or two adjoining eighty-acre subdivisions of the irregular quarters found on the north and west sides of townships where more than two such subdivisions exist, or the excess may render them necessary, provided in the latter case the aggregate quantity does not exceed one hundred and sixty acres.

Fourth. Two half-quarter or eighty-acre subdivisions of a frac-
160 tional or broken section adjoining each other, the aggregate quantity not exceeding one hundred and sixty acres.

Fifth. A regular half-quarter and an adjoining fractional section or an adjoining half-quarter subdivision of a fractional section, the aggregate quantity not exceeding one hundred and sixty acres.

Sixth. If the pre-emptor should not wish to enter the quantity of one hundred and sixty acres, he may enter a single half-quarter-section (made by a north and south line) or an eighty-acre subdivision of a fractional section.

Seventh. One or more adjoining (residuary*) forty-acre lots may be entered, the aggregate not exceeding one hundred and sixty acres.

Eighth. A regular half-quarter, a half-quarter subdivision, or a fractional section, may each be taken with one or more (residuary*) forty-acre subdivisions lying adjoining, the aggregate not exceeding one hundred and sixty acres.

(These lots can only be called "residuary" after the sale of the other portions of the same quarter-section, or fractional quarter-section, pursuant to the act approved April 5th, 1832, authorizing such minor subdivisions.

It is evident, therefore, that forty-acre subdivisions can in no case be permitted of land not yet proclaimed and offered at public sale.*)

Only one person on a quarter-section is protected by this law, and that is the one who made the first settlement, provided he shall have conformed to the other provisions of the law.

A person who has once availed himself of the provisions of this act can not at any future period, or at any other land-office, acquire another right under it.

No person who is the proprietor of three hundred and twenty
161 acres of land in any State or Territory of the United States is entitled to the benefits of this act.

No person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory is entitled to the benefits of this act.

No pre-emption right exists by reason of a settlement on an inhabitancy of a tract, unless at the date of such settlement the Indian title thereto had been extinguished and the land surveyed by the United States.

The approval of the plat is the evidence of the legality of the surveys, but in accordance with the spirit and intent of the law, and for the purpose of bringing the settler within its provisions, the land is to be construed as surveyed when the requisite lines are run on the field and the corners established by the deputy surveyor.

No assignments or transfers of pre-emption rights can be recognized. The patents must be issued to the claimants, in whose names alone all entries must be made.

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* Obsolete. See Act May 8, 1846.

SUNDRY DESCRIPTIONS OF LAND WHICH ARE EXEMPT FROM THE OPERATIONS OF THIS ACT.

First. Lands included in any reservation by any treaty, law, or proclamation of the President of the United States, and lands reserved for salines and for other purposes.

Second. Lands reserved for the support of schools.

Third. Lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act.

Fourth. Sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement.

Fifth. Sections or fractions of sections included within the limits of any incorporated town.

Sixth. Every portion of the public lands which has been selected
162 as a cite for a city or town.

Seventh. Every parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture.

Eighth. All lands on which are situated any known salines or mines.

Persons claiming the benefit of this act are required to file duplicate affidavits such as the law requires, and to furnish proof by one or more disinterested witnesses, to your entire satisfaction, of the facts necessary to establish the three requisites pointed out in the commencement of these instructions.

The witnesses are to be first duly sworn or affirmed to speak the truth and the whole truth touching the subject of inquiry, by some officer competent to administer oaths and affirmations; and, if not too inconvenient by reason of distance of residence from your office, or other good cause, must be examined by you and the testimony reduced to writing in your presence, and signed by each witness, and certified by the officer administering the oath or affirmation, who must also join you in certifying as to the respectability and credit of each witness.

In case adverse claims shall be made to the same tract, each claimant must be notified of the time and place of taking testimony, and allowed the privilege of cross-examining the opposite witnesses and of producing counter-proof, which should also be subject to cross-examination.

When by reason of distance, sickness, or infirmity the witnesses cannot come before you, you are authorized to receive these depositions, which must be in all other respects conformable to the within regulations.

The notice to adverse claimants should be in writing, and should be served in time to allow at least a day for every twenty miles the party may have to travel in going to the place of taking evidence.

163 The proof in all cases should consist of a simple detail of facts merely, and not of statements in broad or general terms involving conclusions of law. It is your exclusive province to determine the legal conclusions arising from the facts. For instance, a witness should not be permitted to state that a claimant is the "head of a family," &c., following the words of the law, but he should set forth the facts on which he grounds such allegation, because such a mode of testifying substitutes the judgment of the witness for yours, and allows him not only to determine the facts but the law. A witness may possibly conscientiously testify that a minor son living with a widowed mother was the

head of the family; and in another case, similar in point of fact, another witness equally conscientious might testify that the widowed mother was the head of the family. There cannot be a uniform construction given to the law if it is carelessly left to the opinion of every witness. You are therefore instructed not to receive as testimony or proof a general statement which embodies in general terms the conclusions of law without stating the facts specifically.

The witnesses must state, if the pre-emptor be the "head of a family," the facts which constitute him such; whether a husband, having a wife and children, or a widower, or an unmarried person under twenty-one years of age, having a family either of relatives or others depending upon him, or hired persons or slaves.

All the facts respecting the settlement in person, inhabitancy, or personal residence, the time of commencement, the manner and extent of continuance, as well as those showing the apparent objects, should be stated.

It must be stated that the claimant made the settlement on the land in person; that he has erected (or has) a dwelling upon the land; that the claimant lived in it and made it his home, &c. By this means
164 you will be enabled to determine whether or not the requisites of the law have been complied with in any given case. Should you decide against a claimant who, feeling dissatisfied with such decision, may request in writing the opinion of this Office thereon, you will forthwith forward all the original papers touching said claim, and a brief report of your reasons for rejecting it, and in the mean time will not permit the land claimed to be entered or sold without an order from the Department.*

The affidavit of the claimant in reference to the fact of settlement, &c., need not be required. It is in no case legal evidence on these points, and therefor' should not form a part of the proof in reference thereto. The only affidavit required of the claimant is that prescribed by the 13th section of the act, which is to be taken before the register or receiver. (See Form C, hereunto annexed.)

No entry must be permitted until this affidavit is taken. Duplicates thereof must be signed by the claimant, and the fact of the oath being taken must be certified by the register or receiver administering it, one copy to be filed in your office and the other to be transmitted to this Office. Each entry made by virtue of this act must be designated by marking on the margin of your quarterly accounts and monthly abstracts opposite to the tract the abbreviation "Pre'n 1841," and on the face of the receipt and of the certificate "Pre-emption act of 1841."

You will continue unbroken the regular series of numbers and certificates. The original proof, affidavit, and receipt must be filed with the certificate of purchase, in each case each paper being appropriately endorsed, and transmitted to this Office with your monthly abstract, which must contain and show the aggregate of lands sold and the pur-
165 chase-money at the foot of the abstract; also a separate aggregate of the lands sold and the purchase-money under each of the pre-emption acts by virtue of which any entries in that month may be made. No excuse can be allowed for negligence in observing this direction.

The forms for applications, receipts, and certificates will be the same as those used for private entries, the distinct provision for land subject

*Appeals to Commissioner allowed. See 10th section act 12th June, 1858, page 326, vol. 11, Statutes at Large.

to private entry rendering a separate form for lands of the latter description unnecessary.

Very respectfully, gentlemen, your obedient servant,

E. M. HUNTINGTON,
Commissioner.

The register of the land-office and receiver of public moneys, land-office at

Declaratory statements of a settler on land subject to private entry at the date of settlement, required by the fifteenth section of the act of fourth September, 1841.

[Form A.]

For cases where at the date of the law the land claimed was subject to private entry.

I, A B, of , being (the head of a family, or widow or single man over the age of twenty one years, as the case may be, and a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be) have, since the first day of June, 1840, to wit, on the day of , A. D. 18 , settled and improved the quarter section, number , in township number of range number , in the district of lands subject to
166 sale at the land-office at , and containing acres, which land was subject to private entry at the passage of the act of 4th September, 1841; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of said act of 4th September, 1841.

Given under my hand this day of , A. D. 18 .

(Signed) A B.

In presence of—
C D.

[Form B.]

For cases where the land claimed shall have been rendered subject to private entry since the date of the law.

I, A B, of , being (the head of a family, or widow or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be,) did, on the day of , A. D. 18 , settle and improve the quarter of section number , in township number , of range number , in the district of lands subject to sale at the land-office at , and containing acres, which land has been rendered subject to private entry since the passage of the act of 4th of September, 1841, but prior to my settlement therein; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of 4th September, 1841.

Given under my hand this day of , A. D. 18 .

(Signed) A B.

In presence of—
C D.

167 [Form C.]

Affidavit required of pre-emption claimant.

I, A B, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841, to the quarter of section number , of township number , of range number , subject to sale at , do solemnly swear (or affirm as the case may be) that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon or improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself.

(Signed) A B.

I, C D, register (or E F, receiver) of the land-office at , do hereby certify that the above affidavit was taken and subscribed before me, this day of , A. D. 18 .

(Signed) C D, *Register.*
or E F, *Receiver.*

An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights.

168 SEC. 10. And be it further enacted, That from and after the passage of this act every person being the head of a family, widow or single man over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen as required by the naturalization laws, who, since the first day of June, A. D. eighteen hundred and forty, has made, or shall hereafter make, a settlement in person on the public lands, to which the Indian title had been at the time of such settlement extinguished, and which has been or shall have been surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be and is hereby authorized to enter with the register of the land-office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter-section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject however to the following limitations and exceptions: No person shall be entitled to more than one pre-emption right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall require any right of pre-emption under this act; no lands included in any reservation by any treaty, law, or proclamation of the President of the United States, or reserved for salines or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may

169 be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled or occupied for the purposes of trade, and not agricultures; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-Rabbit Creek, be, and the same is hereby, repealed: Provided, that such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 11. And be it further enacted, That when two or more persons shall have settled on the same quarter-section of land the right of pre-emption shall be in him or her who made the first settlement, provided such persons shall conform to the other provisions of this act, and all questions as to the right of pre-emption arising between different settlers shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the *Secretary of the Treasury (Interior) of the United States.

SEC. 12. And be it further enacted, That prior to any entries being made under and by virtue of the provisions of this act, proof of the set tlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land-district,
170 in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, (Interior,) who shall each be entitled to receive fifty cents from each applicant for his services to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. And be it further enacted, That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land-district in which the land is situated (who are hereby authorized to administer the same) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon or improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all

*Appellate power vested in Commissioner of the General Land Office See 10th sec. act 12th June, 1858. (Statutes, vol. 11, p. 326.)

right and title to the same; and any grant or conveyance which he or she may have made for said land, and all right and title to the same, and any grant or conveyance which he or she may have made except in the hands of bona-fide purchasers for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering
171 such oath to file a certificate thereof in the public land-office of such district, and to transmit a duplicate copy to the General Land-Office; either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 14. And be it further enacted, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been or may be appointed by the proclamation of the President; nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required, before the day appointed for the commencement of the sales as aforesaid.

SEC. 15. And be it further enacted, That whenever any person has settled or shall settle or improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months after the passage of the same, and in the last, within thirty days after the date of such settlement, file with the register of the proper district a written statement describing the lands settled upon and declaring the intention of such person to claim the same, under the provisions of this act, and shall where such settlement is already made within twelve months after the passage of this act, and where it shall hereafter be made within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

Approved September 4, 1841.

172 GENERAL LAND-OFFICE,
November 25, 1841.

GENTLEMEN: In the instructions of 15th September last, an omission was made in not referring to a class of pre-emptors provided for in the act of the 4th of that month.

In the 1st paragraph on the 2d page of that circular, the words "where the land was subject to private entry at the date of the law and a settlement shall thereafter be made upon such land or" were omitted before the first sentence of that paragraph. They should have been inserted so as to have that paragraph read: "Where the land was subject to private entry at the date of the law, and a settlement shall thereafter be made upon such land, or where the land hereafter shall become subject to private entry, and after that period a settlement shall be made, which the settler is desirous of securing under this act, such notice of his intention must be given within thirty days after the date of such settlement."

The word "both" in the 4th line on the 2d page should be "all;" and the word "case," in the 9th line of the same page, "cases."

A number of copies of this page will be furnished for the purpose of being attached to the circular of the above date, after the 10th page.

I am very respectfully, gentlemen, your obedient servant,

E. M. HUNTINGTON,
Commissioner.

The register of the land-office and receiver of public moneys, land-office at

GENERAL LAND-OFFICE,
September 28, 1842.

GENTLEMEN: The act of Congress of the 26th August last entitled "An act to confirm the sale of public lands in certain cases" con-
173 tains the following declaration, viz: "That the act of fourth of September, eighteen hundred and forty-one, entitled 'An act to appropriate the proceeds of the sales of public lands and to grant pre-emption rights,' shall be so construed as not to confer on any one a right of pre-emption by reason of a settlement made on a tract heretofore sold under a prior pre-emption law or at private entry, when such prior pre-emption or entry has not been confirmed by the General Land-Office, on account of any alleged defect therein, and when such tract has passed into the hands of an innocent and bona-fide purchaser."

No entry will therefore be permitted by virtue of the act of 4th September, 1841, of any tract of land sold prior to 26th August last, whether by pre-emption or private entry, where such entry has been rejected by this Office; provided the land so purchased has, prior to that time, "passed into the hands of an innocent bona-fide purchaser."

All transfers or assignments to third persons are presumed to be to "innocent and bona-fide purchasers," unless the contrary is shown by satisfactory evidence.

The books and plats of your office will show whether a sale of the land by the Government has been made; and where the records or papers do not exhibit evidence of a transfer or assignment from the original purchaser to another person, information must be sought and had from this Office before permitting a claimant under the act of 4th September, 1841, to enter the land so sold.

The experience of this Office as to the operation of the act of 4th September, 1841, during the past year seems to require the additional instructions subjoined.

You will require of every claimant satisfactory proof that he
174 had not left his "own land, in the same State or Territory," to make the settlement by virtue of which he claims a right under the act of 4th September, 1841.

Lands subject to private entry at the time of the settlement therein cannot be entered by the settler under the law of 4th September, unless he shall file a declaratory statement, such as the 15th section of the act requires, and in due time produce the necessary *produce the necessary* proof of his right and make the affidavit required by the law.

Where such settler, instead of entering the lands as he might at private entry, elects to enter the same under the provisions of the law of 4th September, 1841, (whereby he obtains a year's time from the date of the settlement to make the payment,) he is bound to comply with all the requirements of that law. A failure to do so in regard to any of these requirements renders the land subject to the entry "of any other purchaser," (*and any person so failing is positively debarred by the law from the privilege of making a private entry of the same, under any pretence.) Instances have been made known where persons filed the declaratory statement, as required, without any improvements having been made, merely with a view of keeping the land from being entered by any other person for a year, intending, near the expiration of that time, to abandon their pretended pre-emption claim and enter the same

* Obsolete. See proviso to 9th section act of 3d March, 1843. Circular of 8th May, 1843.

at private entry. The consummation of all such cases must be prevented, and this can be done by requiring a rigid compliance with all the provisions of the law, as above directed.

A claimant is bound to prove his right to and enter all the land embraced by his declaratory statement, if liable to the operation of the act.

Declaratory statements are required only* "for land subject to private entry at the time of settlement, and they should not be re-
175 ceived, filed, or reported to this Office if presented for any other land; nor should they be received for forty-acre† lots unless they are "residuary" ones, such minor subdivisions, with the exception of residuary‡ tracts, not being liable to the operation of the act of 4th September, 1841. The law provides only for settlements made since 1st June, 1840. Where, therefore, parties have made settlements prior to that time, and have not availed themselves of the privileges of the pre-emption act of 1st June, 1840, their own neglect has deprived them of any right of pre-emption founded on such settlements.

The proof filed by every claimant must show the time§ of the commencement of the settlement, as required by the 1st paragraph, 5th page, of the instructions of 15th September, 1841.

The affidavit of the claimant, required by the 13th section of the act, must be taken "before the register or receiver of the land-district in which the land is situated," before an entry is permitted, and must be of the same date of the certificate of entry.

An affidavit before any other person will not justify your permitting the entry of the land claimed.

176 To entitle a claimant to the benefits of the act of the 4th September, 1841, it is necessary that he should have been either a citizen of the United States, or have filed his declaration of intention to become a citizen, at the time of the settlement upon which his claim is based.

The law confers only on the first settler the right of pre-emption. The question of priority will in all cases be decided by you, and where an appeal from such decision is taken, you will transmit to this Office, for reference to the Secretary of the Treasury, (Interior,‖) the evidence filed by all the parties claiming the said land, with a brief reference to the grounds of your decision.

The action of the Secretary of the Treasury (Interior) will be reported to you, and then the entry can be made by the person in whose favor the decision may be, on the Secretary's revision of the case.

Very respectfully, gentlemen, your obedient servant,

THO. H. BLAKE,
Commissioner.

The register of the land-office and receiver of public moneys, at

* Since the date of this circular, the act of 3d March, 1843, has been passed, the 5th section of which requires similar declaratory statements for "unoffered land." See circular of the 8th May, 1843.

† By act of 8th May, 1846, forty-acre tract', whether of "offered" or "unoffered," are rendered subject to pre-emption. See circular of 14th May, 1846.

‡ Where an entry has been made of one forty-acre lot, of a legal eighty-acre subdivision, in virtue of the act of 5th April, 1832, entitled "An act supplementary to the several laws for the sale of public lands," the contiguous forty-acre lot of such legal subdivision is called the "residuary quarter-quarter."

§ This date is all-important for the purpose of determining in all cases whether the settlement was made within the proper time, and in those where the declaratory statement is required, whether such statement is filed in due season, and the entry made within the legal period after the settlement.

‖ See 10 sec. act 12th June, 1858.

177 GENERAL LAND-OFFICE, *May 8th*, 1843.

GENTLEMEN: Annexed is a copy of an act of Congress, approved on the 3d March last, "to authorize the investigation of certain alleged frauds under the pre-emption laws, and for other purposes."

Wherever the time prescribed for making proof and payment on a claim by the law under which it originated has expired, the provisions of the present act do not apply.

The first section of the act being of special application to a single land-district, has been acted on accordingly.

The second section provides for the rights of parties who shall have died before consummating their claims by the filing, in due time, of all the papers essential to establish the same. Under it you are authorized, if proof of such right shall be filed and payment thereof be made by the executor, administrator, or one of the heirs, during the period prescribed by the law upon which the claim is founded, to permit the entry in the name of "the heirs" of the deceased claimant. A patent on such an entry will cause the title to inure to said heirs as if their names had been specially mentioned. In cases of this kind the affidavits required of the pre-emptor by the acts of June 22, 1838, June 1, 1840, and September 4, 1841, respectively, will be taken by the person so filing the proof, and should such person be one of the heirs, he or she should be of age and mind competent to appreciate the nature and obligation of an oath. (Forms for such affidavits are hereto annexed, marked A and B.)

The third section provides for cases under all the previous pre-emption laws, except that of September 4, 1841, where the settlement was
178 made on unsurveyed land, and is subsequently discovered to interfere with section sixteen, reserved for schools, or with a tract reserved for any other purpose, or with a tract covered by a private claim. It admits the settler thus circumstanced to enter any other quarter-section, or fractional section, or fractional quarter-section in the same land-district, so as not to exceed one hundred and sixty acres of land not reserved from sale, or in the occupancy of any other bona-fide settler.

Under the third section of the act of 1st June, 1840, settlers within the purview of the act of 1838 or 1840, who reside on a sixteenth section reserved for schools, did enjoy the right of locating a "quarter-section" anywhere else in the same land-district to which no other person had "a right of pre-emption." The present act, in extending to such settlers on a sixteenth section the increased privilege of locating at their option other species of tracts, viz, "fractional section" or a "fractional quarter-section," restricts the previous privilege of location to vacant and unimproved land. No location is to be allowed by you under this section of the act unless upon the filing of satisfactory proof that the substituted land is not in the occupancy of any bona-fide settler; which testimony, with the other papers in the case, you will transmit to this Office. (See Note I.)

The fourth section declares it unlawful for an individual who has once filed a declaration for one tract of land to file at any future time a second declaration for another tract. This has reference to those required, under the 15th section of the act of 1841, for land subject at the time of settlement to entry at private sale.* Your record of such declarations will afford you some means of detecting a violation of this
179 provision, and whenever you do detect it by any means whatever,

* Construed as applying to unoffered as well as offered lands. See circular of 3d December, 1856.

you are to refuse to receive or notice the same; and if such declaration shall have been received and reported to this Office before the discovery is made, such fact will not prevent your regarding the land as subject to the entry of the first applicant, in the same manner as if no declaration had been filed.

The fifth section requires that similar notices or declarations in writing should be filed by settlers under the act of 4th September, 1841, on land not subject to private entry. These declarations are to be filed in your office by every such settler within three months after his settlement, except as to those whose settlements were made prior to the 3d March last, in which cases such declarations are to be filed within three months from that date, viz, before the 3d of June next. The register will number such statements regularly in the order of their date of reception, enter them in a suitable book prepared therefor, furnish this Office with monthly abstracts from said book, and in all other respects pursue the same course in relation to them as he is required to do by the 3d and 4th paragraphs on the 2d page of the circular of 15th September, 1841, in regard to the declarations therein referred to.

Particular care must be taken not to confound the two species of declarations, but to keep separate files thereof, enter them in the respective books prepared for each, and in the monthly abstracts transmitted to this Office discriminate between the two by heading the one "For land subject to private entry," and the other "For land not yet offered for sale." (A form for a declaration under this section of the act is hereto appended, marked C.)

By the sixth section, provision is made for the benefit of claim-
180 ants whose rights might otherwise be jeoparded by reason of a vacancy which has occurred or may hereafter occur in either of your offices or both. By it a claimant is authorized hereafter to file a declaration, under the law of 4th September, 1841, or to make an entry of a claim under any of the pre-emption laws, although the time prescribed by the law for the filing of such declaration or the making of such entry shall have expired, provided the claimant was prevented by such vacancy from performing said act or acts within such time, and shall perform the duties required by law within the same period after the disability is removed, as he would have had if such vacancy had not occurred. (See Note II.)

The seventh section extends the privileges given to one class of claimants under the act of 22d June, 1838, by the 1st section of the act of 1st June, 1840, to another class of claimants under the same law. In future, a settler who shall have resided "on the 22d June, 1838, and for four months next preceding" on a quarter-section, a fractional quarter-section, or a fraction of a section less than one hundred and sixty acres, and have cultivated land on any other and different tract of either of the descriptions above mentioned, such settler is entitled to a choice between the tract resided on and the tract cultivated, or legal subdivisions of each, to include his or her house and farm, so as not to exceed one hundred and sixty acres, upon filing the requisite proof and making payment for the land claimed within the period prescribed by law. This extension of benefits is made to single settlers, and to those only whose settlements were made at the period required by the act of 22d , 1838; it does not apply to settlements made since 22d June, 1838, and prior to 1st June, 1840. (See Note III.)

181 The eighth section modifies the first proviso of the act of 22d June, 1838, applicable as well to claims under that act as to those under the act of 1st June, 1840. In future, where two or more were re-

siding on a quarter-section, fractional quarter-section, or fraction of a section less than one hundred and sixty acres at the period required by the act of 22d June, 1838, or that of 1st June, 1840, and any one or more of such residents were cultivating during the same period on another and different tract, or other and different tracts, the persons so cultivating have the option of entering the tract lived on jointly with the other or others, or of abandoning the tract lived on to those who have not cultivated, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler so cultivating. Where the persons cultivating do not abandon the tract resided on, a joint entry by all the residents may be made of such tract, and other "contiguous unoccupied lands, by legal subdivisions," to the extent of as many times one hundred and sixty acres, in the whole, as these residents on the first-mentioned tracts entitled under the same law. Where the cultivator or cultivators abandon the tracts resided on to the other residents, the former are entitled to make a separate entry of the tract or separate entries of the tracts cultivated, not to exceed one hundred and sixty acres to any one settler, and the latter have no claim to any land in addition to that resided on. In cases under this section of the act, each cultivator must file separate proof of his right, so as to enable you to file the same with the separate entry of such cultivated tract. The "contiguous" unoccupied land referred to in this section of the act is to be understood as land separated from the tract resided on by a line only, not land in the neighborhood, as near as may be; and where there is no such contiguous land by reason of its being rightfully claimed by or in the occupation of others, the right fails. Such contiguous land is to be embraced in the same
182 certificate with the land on which the claimants reside.

The proviso to this eighth section limits the extended privileges given by the act. It may, therefore, happen that a tract other than a quarter-section may be claimed (under the provisions of the 7th and 8th sections of this act) by virtue of its cultivation during the period required by the act of 22d June, 1838, where the same tract is claimed by a resident thereon under the act of 1st June, 1840, or under that of 4th September, 1841; or it may be the subject of conflict between a cultivator at the time required by the act 1st June, 1840, under the eighth section of this act, and a resident under the act of 4th September, 1841. In all such cases the first-mentioned claims, which would otherwise exist under this act, must yield to the "previous and paramount right of pre-emption," founded on the provisions of law existing at the date of this act. (See Note IV.)

By the ninth section you are authorized to permit the entry of a claim under the act of 4th September, 1841, although it may be for land not surveyed at the time of the settlement, where such settlement was made prior to the 4th September, 1841, and after the extinguishment of the Indian title. The object of this, it will be seen, is to modify the provisions of the act of 1841 so far as to remove from claims under it the fatal objection of being founded on a settlement made before the survey, provided such settlement was made prior to the 4th September, 1841.

The concluding paragraph of the ninth section renders inoperative the construction placed by this Office upon the latter part of the fifteenth section of the act of 4th September, 1841. That portion, therefore, of *of* the last paragraph on the 1st page of circular of 28th September, 1842, which relates to this subject is annulled, and you are
183 instructed to permit a person who has filed or shall hereafter file, according to law, a declaratory statement for a tract of land sub-

ject to private entry, to enter the same after the twelve months from the time of his settlement shall have expired, without filing any proof of his right as a pre-emptor, provided he is the first applicant, after that time, for the entry of the same at private sale. (See Note V.)

I am, very respectfully, your obedient servant,

THO. H. BLAKE,
Commissioner.

NOTE I.

(The pages herein referred to will be found in part I "Laws, Instructions, and Opinions.")

Claims under this third section may arise under the act of 5th February, 1813, (page 225,) and the fifth section of the act of 12th April, 1814, (page 244,) inasmuch as those laws are yet unoperative on land (to which the Indian title was extinguished at their respective dates) situated in a township not yet offered for sale, and which land is within the boundaries of the then Territories of Illinois and Missouri, and that part of the State of Louisiana which composed the theretofore Territory of Orleans. The proof and payment under these acts were not required to be made until two weeks prior to the commencement of the public sale.

Claims may also arise under act of 29th May, 1830, (page 473,) the proviso to the act of 5th April, 1832, (page 494,) the act of 19th June, 1834, (page 525,) the act of 22d June, 1838, (page 574,) and act of 1st June, 1840,
entitled "An act supplemental to the act entitled 'An act to
184 grant pre-emption rights to settlers on the public lands,' approved
June 22, 1838," inasmuch as the five last-mentioned acts, the first, third, fourth, and fifth, by virtue of the act of 14th July, 1832, (page 510,) and the second by virtue of the act (page 521) of 2d March, 1833, are operative on land subject to pre-emption, at their respective dates, where the plats have not yet been returned to your office, or, being so returned, the year subsequent thereto shall not have expired when the claim is preferred.

The third section of the act of 27th February, 1815, (page 257,) the third section of the act of 3d March, 1819, (page 312,) and the third section of the act of 1st June, 1840, (as explained in the body of this circular,) all provided for settlements on school-lands made by claimants at the periods required by acts of 1813, 1814, 1838, and 1840, before referred to; but these provisions are now all merged in this third section of the act of 3d March last, and all future locations are to be made in accordance with its provisions.

NOTE II.

The fifteenth section of the act of 4th September, 1841, requires that the declaration therein referred to shall be filed within thirty days after the settlement, and the proof and payment made within twelve months after such settlement. The fifth section of the act of 3d March, last, requires the declarations, in cases to which it has reference, to be filed within three months after the date of the act where settlement was made prior to the 3d March last, or three months after the settlement where it shall be made subsequent to the said 3d March, and the proof and
payment may be made at any time before the commencement of
185 the public sale which shall embrace the land claimed.

NOTE III.

The first section of the act of 1st June, 1840, gave to a settler under act of 22d June, 1838, residing on one quarter-section, and cultivating land on another and different quarter-section, the right of entering either of said quarter-sections or legal subdivisions of each, not to exceed one hundred and sixty acres. This privilege embraced only single settlers on such tracts, namely, where but one settler was residing on one and cultivating the other of such tracts; because only in such cases could the choice given be exercised. This section extends a similar privilege to such single settlers, under act of 1838, on other tracts than a "quarter-section," but has omitted to provide for like cases under act of 1st June, 1840.

NOTE IV.

The first proviso of the act of 22d June, 1838, declares that "where more than one person may have settled upon and cultivated any one quarter-section of land, each one of them shall have an equal share or interest in the said quarter-section, but shall have no claim by virtue of this (said) act to any other land." This proviso was not affected by the first section of the act of 1st June, 1840, that referring only to single settlers on a quarter-section. (See Note III.) It is now entirely superseded in regard to future cases under acts of 1838 and 1840, where there are two or more settlers on the same quarter-section, by the 8th section of the act of 3d March last, which not only gives extended privileges to such settlers under either of said acts on a quarter-section, but makes
186 provision for like settlers on other tracts than a quarter-section.

NOTE V.

The act of 4th September, 1841, conferred no right where the settlement was made on land to which the Indian title had not been extinguished, and which was not also surveyed at the time of such settlement.

The latter part of the fifteenth section of the act of 4th September, 1841, provided that a failure on the part of a claimant under that section to do any of the acts required thereby, should render the land subject to the entry "of any other purchaser." The circular of 28th September, 1842, directed such a construction of this latter clause to be observed by the land-officers as would prevent such a claimant from coming forward to enter at private sale land previously claimed by him as pre-emptor, after keeping it for twelve months from being purchased by any one else. He had also elected to take it as a pre-emptor, and as such was bound under that law to prove his right; and it was believed that Congress, in declaring the land subject to the entry of "any other purchaser," should he fail to make good his right of pre-emption, expressly designed to exclude him in consequence of his neglect or inability to show the truth of his declaratory statement by which the land was for twelve months withheld from being sold to any other person.

[Form A.]

Affidavit to be filed in cases (under act of 22d June, 1838, or 1st June, 1840) where the settler shall have died before proving up and entering his claim.

187 I, A. B., (executor of the estate of C. D., or administrator of the

estate of C. D., or one of the heirs of C. D., aged years, as the case may be,) do solemnly swear (or affirm, as the case may be) that the said C. D., to the best of my knowledge and belief, entered upon the quarter-section number of township number of range number , subject to sale at , in his own right and exclusively for his own use and benefit; and that he has not directly or indirectly made any contract or agreement, in any way or manner, with any person or persons whatever, which the title to the land which he might have acquired from the Government of the United States by virtue of said settlement, under the law of 22d June, 1838, (or 1st June, 1840, as the case may be) should inure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he might have acquired to the same, to any other person or persons whatever at any subsequent time.

A. B., *Executor of the Estate of C. D.*, (*or Administrator of the Estate Of C. D., or one of the heirs of C. D.*, as the case may be.)

Sworn to and subscribed before me this day of , A. D. 18.

E. F., *Register*, or
G. H., *Receiver*, or
I. K., *Justice of the Peace.*

[Form B.]

Affidavit to be filed in cases (under act of 4th September, 1841) where the settler shall have died before proving up and entering his claim.

I, A. B., (executor of the estate of C. D., or administrator of the
188 estate of C. D., or one of the heirs of C. D., aged years, as the case may be,) do solemnly swear (or affirm, as the case may be,) that to the best of my knowledge and belief the said C. D., who was a settler on the quarter of section number of township number ofr ange number , subject to sale at , has never had the benefit of any right of pre-emption under the act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841; that he was not at the time of his death the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he did not settle upon and improve the above tract of land on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might have acquired from the Government of the United States should inure, in whole or part, to the benefit of any person except himself.

(Signed) A. B., *Executor*, or *Administrator*, or
One of the heirs of C. D., as the case may be.

I, E. F., register (or G. H., receiver) of the land, at ,do hereby certify that the above affidavit was taken and subscribed before me this day of , A. D. 18 .

(Signed) E. F., *Register*, or
G. H , *Receiver.*

189 [Form C.]

Declaratory statement for cases where the land is not subject to private entry.

I, A. B., of , being (the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be) did, on the day of , A. D. 18 , settle and improve the quarter of section number in township number of range number in the district of lands subject to sale at the land-office at , and containing acres, which land has not yet been offered at public sale and thus rendered subject to private entry; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of 4th September, 1841.

Given under my hand this day of , A. D. 18 .

(Signed) A. B.

In presence of—

C. D.

An act to authorize the investigation of alleged frauds under the pre-emption laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Com-
190 missioner of the General Land-Office be, and he hereby is, authorized to appoint a competent agent, whose duty it shall be, under direction of said Commissioner, to investigate upon oath the cases of fraud under the pre-emption laws alleged to exist in the Columbus land-district, in the State of Mississippi, referred to in the late annual report of said Commissioner, communicated to Congress by letter of the Secretary of the Treasury, dated December the fifteenth, one thousand eight hundred and forty-two; and that such agent shall examine all witnesses who may be brought before him by the individual or individuals alleging the fraud, as well as those witnesses who may be produced by the parties in interest to sustain said claims; and that he be, and he is hereby, invested with power to administer to such witnesses an oath to speak the truth in regard to any question which may be deemed necessary to the full examination of the cases so alleged to be fraudulent; and such testimony shall be reduced to writing, and subscribed by each witness, and the same returned to the Commissioner, with the opinion of said agent on each claim; and any witness so examined before the said agent who shall willfully and falsely with regard to any matter or thing touching such examination, shall be subject, on conviction, to all the pains and penalties of perjury; and it shall be the duty of the Commissioner to decide the cases thus returned, and finally to settle the matter in controversy, subject alone to an appeal to the Secretary of the Treasury: Provided, That the power conferred by this section upon such agent is hereby limited to the term of one year from and after the date of this act; and the compensation to be paid to said agent shall not exceed three dollars per day for each day he may be necessarily engaged in the performance of the duties required by this section.

191 SEC. 2. And be it further enacted, That in any case where a party is entitled to claim the benefits of any of the pre-emption laws shall have died before consummating his claim, by filing in due time all the papers essential to the establishment of the same, it shall

be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same: Provided, That the entry in such cases shall be made in favor of the heirs of the deceased pre-emptor, and a patent thereon shall cause the title to inure to said heirs as if their names had been specially mentioned.

SEC. 3. And be it further enacted, That every settler on section sixteen, reserved for the use of schools, or *one* other reserves or land covered by private claims of others, which was not surveyed at the time of such settlement, and who shall otherwise come within the provisions of the several pre-emption laws in force at the time of the settlement, upon proof thereof before the register of the proper land-office shall be entitled to enter at the minimum price any other quarter-section or fractional section or fractional quarter-section in the land-district in which such school section or reserve or private claim may lie, so as not to exceed one hundred and sixty acres, not reserved from sale or in the occupancy of any actual bona-fide settler: Provided, Such settlement was not made before the date of the act of fourth September, eighteen hundred and forty-one, and after the extinguishment of the Indian title.

SEC. 4. And be it further enacted, That where an individual has filed, under the late pre-emption law, his declaration of intention to claim the benefits of said law for one tract, it shall not be lawful for the
192 same individual at any future time to file a second declaration for another tract.

SEC. 5. And be it further enacted, That claimants under the late pre-emption law for land not yet proclaimed for sale are required to make known their claims in writing to the register of the proper land-office, within three months from the date of this act, when the settlement has been already made, and within three months from the time of the settlement when such settlement shall hereafter be made, giving the designation of the tract and the time of settlement; otherwise his claim to be forfeited and the tract awarded to the next settler, in the order of time, on the same tract of land, who shall have given such notice and otherwise complied with the conditions of the law.

SEC. 6. And be it further enacted, That whenever the vacancy of the office either of register or receiver or of both shall render it impossible for the claimant to comply with any requisition of any of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim: Provided, That such requisition is complied with within the same period after the disability is removed as would have been allowed him had such disability not existed.

SEC. 7. And be it further enacted, That where a settler on the public lands may reside on a quarter-section, a fractional quarter-section, or a fraction of a section less than one hundred and sixty acres, and cultivated land on any other and different tract of either of the descriptions aforesaid, he or she shall be entitled, under the act of June twenty-
193 two, one thousand eighteen hundred and thirty-eight, to the same privileges of a choice between two legal subdivisions of each, so as to include his or her house or farm, not to exceed one hundred and sixty acres in all, as is granted by the first section of that act to settlers residing on a quarter-section and cultivating on another and different quarter.

SEC. 8. And be it further enacted, That where two or more persons are residing on any of the species of tracts specified in section seven of

this act, as required by the acts of the twenty-second of June, one thousand eight hundred and thirty-eight, and the first of June, one thousand eight hundred and forty, and any one or more of said settlers may have cultivated land during the period of residence required by either of said acts on another and different tract, or other and different tracts, the latter-mentioned settlers shall be entitled to the option of entering the tract lived on, jointly with the other or others, or of abandoning the tract lived on to those who have not cultivated land as above required, and entering the tract or tracts cultivated so as not to exceed one hundred and sixty acres to any one settler who, by virtue of this section, is entitled to a separate entry; or such joint settlers may jointly enter the tract so jointly occupied by them, and, in addition, enter other contiguous unoccupied lands by legal subdivisions, so as not to exceed one hundred and sixty acres in all to each of such joint settlers: Provided, That the extended privileges granted to pre-emptors by this act shall not be construed to deprive any other actual settler of his or her previous and paramount right of pre-emption, or to extend to lands reserved for any purpose whatever.

194 SEC. 9. And be it further enacted, That all persons coming within the tenth section of the act of the fourth of September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," shall be entitled to the right of pre-emption under its provisions, notwithstanding such persons claiming the pre-emption shall have settled upon and improved the lands claimed before the same was surveyed: Provided, Such settlements were made before the date of the aforesaid act and after the extinguishment of the Indian title. And said act shall not be so construed as to preclude any person who may have filed a notice of intention to claim any tract of land by pre-emption under said act from the right allowed by law to others to purchase the same by private entry after the expiration of the right of pre-emption.

Approved March 3, 1843.

GENERAL LAND-OFFICE, *May* 14, 1846.

GENTLEMEN: Enclosed I send you a copy of an act entitled "'An act supplementary to the several laws for the sale of the public lands,' approved April 15th, one thousand eight hundred and thirty-two," and for other purposes, approved May 8th, 1846.

Under the provisions of this act, forty-acre tracts, or quarter-quarter sections, are subject to entry, selection, or location, precisely in
195 the same manner that eighty-acre tracts, or half-quarter sections, have heretofore been; consequently the affidavits for the entry of quarter-sections heretofore required will now be dispensed with, and it will no longer be necessary to note these entries on the returns as being under the act of fifth April, 1832. All lands, however, will be offered at public sale in half-quarter sections, or eighty-acre tracts, as heretofore.

Very respectfully, your obedient servant,

JAMES SHIELDS,
Commissioner.

Register of the Land-Office and Receiver of Public Moneys.

An act to repeal a part of the act entitled "An act supplementary to the several laws for the sale of the public lands," approved April fifth, one thousand eight hundred and thirty-two, and for other purposes.

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled, That from and after the passage of this act the second proviso of the act entitled "An act supplementary to the several laws for the sale of the public lands," approved April fifth, one thousand eight hundred and thirty-two, which is as follows, viz: "That no person shall be permitted to enter more
196 than one half-quarter section of land under this act in quarter-quarter sections, in his own name, or in the name of any other person, and in no case unless he intends it for cultivation, or for the use of his improvement; and the person making application to make an entry under this act shall file his or her affidavit under such regulations as the Secretary of the Treasury (Interior) may prescribe, that he or she makes the entry in his or her own name, for his or her own benefit, and not in trust for another;" shall be, and the same is hereby, repealed; and all entries, selections, or locations of lands now suspended in the General Land-Office, because made contrary to the restrictions of this proviso, shall be, and they are hereby, confirmed, provided they are in all other respects fair and regular.

Approved May 8, 1846.

Public notice.

GENERAL LAND-OFFICE, *April* 5, 1854.

Whereas by an act of Congress approved March 17, 1854, entitled "An act for the relief of settlers on lands reserved for railroad-purposes," every settler on public lands "which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them: Provided, they shall prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior,
197 and pay for the same before the day that may be fixed by the President's proclamation for the restoration of said lands to market:" public notice is hereby given, by direction of the Secretary of the Interior, that all such settlers will be entitled to the right of pre-emption given by the said act upon furnishing proof (satisfactory to the district office) that the settlement on which the claim is predicated is of a character to entitle a settler to a right of pre-emption under the provisions of the act of 4th September, 1841, and was made by such settler prior to the "withdrawal" of the land for the purpose stated, no "declaration" of course being necessary under the circumstances, provided payment be made for the same "before the day that may be fixed by the President's proclamation for the restoration of said lands to market."

JOHN WILSON,
Commissioner.

GENERAL LAND-OFFICE, *October* 24, 1856.

GENTLEMEN: By reference to the enclosed copy of circulars, page 10, you will perceive that in each case of pre-emption the original proof, affidavit, and receipt must be filed with the certificate of purchase, each paper being appropriately endorsed and transmitted to this office with your monthly abstracts.

Where the claim is located by warrant, the proof must be filed with it; also when it is only in part located and the residue paid for in cash.

198 In the latter class of cases, where the excess extends to and is in satisfaction of a legal subdivision, it will be necessary to issue

a certificate of purchase for such subdivision, in which cases the proof should accompany the cash entry; on which entry or certificate must be endorsed the fact that the residue of the claim has been located with warrant, giving the number, act under which issued, &c., and on the certificate of location make a reference to the cash entry.

Likewise, in your military abstracts note opposite to each case of pre-emption the law under which preferred, and where the claim is *is* located in part only with warrant and the residue paid for, and a certificate of purchase issued, give the number of the cash entry.

A strict compliance with this requirement and all others in the enclosed circulars will be insisted upon, otherwise confusion and unnecessary labor and delay must inevitably follow.

Respectfully, your ob'dient servant,

THOS. A. HENDRICK',
Commissioner.

Register and receiver at

Circular respecting fees for pre-emption sales or locations.

GENERAL LAND-OFFICE, *November* 21, 1856.

GENTLEMEN: It has been represented to this Office that a practice has obtained at some of the local land-offices of making out or
199 preparing pre-emption papers and charging money for the service, and such charges have been made the subject of complaint. It is therefore deemed proper to issue the following instructions:

1st. Any such charges are without authority of law and against the orders of the Department. It is proper, however, to add that the duties of the local land-officers, which are prescribed by law and instructions, do not enjoin upon the register and receiver the making out or preparation of papers for claimants, that being a matter to be attended to by the pre-emptors themselves. Yet it is the desire of the Department that all reasonable facilities and information shall be given by the register and receiver to parties, to enable them properly to prepare and present their claims for your official action thereon. For such official action, however, you have a legal right to a fee, in virtue of the 12th section of the pre-emption act of 4th September, 1844, which declares that each officer is entitled to receive fifty cents for his services in acting upon each case of pre-emption; but as in many instances the parties do nothing more than file the "notice" required by law, this Office has long since determined that there is no objection to the register receiving his fee (50 cents) at the time of filing such notice, making subsequently no further charge; but that as the receiver has no labor in the case until the proof is filed and submitted for his action, the latter officer has no right to the fee until he shall be called upon to perform the duty for which payment is provided.

2d. By the 2d section of the act of 22d March, 1852, chap. 19, registers and receivers are authorized to charge and receive the same compensation or percentage for their services in locating all military
200 bounty-land warrants issued since the 11th of February 1847, as they are entitled to by law for the sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.

General Land-Office bounty-land circular of 3d May, 1855, contains the tariff in each case allowed for locations of such warrants, which of course embraces the locations of pre-emptors.

The following fees are chargeable by the land-officers, and the several amounts must be paid at the time of the location:

For a 40-acre warrant, 50 cents	each	to the register	and receiver,	total	$1.00.
For a 60-acre warrant, 75 cents	do.	do.	do.	do.	1.50.
For an 80-acre warrant, $1	do.	do.	do.	do.	2,00.
For a 120-acre warrant, $1.50	do.	do.	do.	do.	3.00.
For a 160-acre warrant, $2	do.	do.	do.	do.	4.00.

3d. By the act of 12th June, 1840, chap. 35, the district land-officers are required to administer any oath requisite under law in connexion with the entry or purchase of any tract of land, but it is thereby declared that they "shall not directly or indirectly charge or receive any compensation for administering such oaths."

You are requested to acknowledge the receipt of this communication and enjoined strictly to observe its requirements.

Very respectfully, your obedient servants,

THOS. A. HENDRICKS,
Commissioner.

Register and receiver.

201 *Pre-emption acts* 1841 *and* 1843.

GENERAL LAND-OFFICE, *December* 3, 1856.

GENTLEMEN: By the 4th section of the act of the 3d of March, 1843, it is declared that "where an individual has filed under the late pre-emption-law (1841) his declaration of intention to claim the benefits of said law for one tract of land, it shall not be lawful for the same individual at any future time to file a second declaration for another tract."

This prohibition is held by the Department to extend to both classes of lands, unoffered and such as are subject to private entry.

Where a claimant, however, of either class of land files a declaration which may prove to be invalid in consequence of the land applied for not being open to pre-emption, or by the determination against him as a conflicting claimant, or from any other similar cause, which would have prevented him from consummating a pre-emption under such declaration, such illegal filing will be treated as a nullity, and as no inhibition to his subsequently filing a legal and proper declaration for the same tract, should it become liable to pre-emption, or for any other land; it being the purpose of the law to allow a claimant a pre-emption on one tract, and nothing more; and also to prevent declarations from being presented or filed where the intention of establishing a pre-emption is not bona fide.

Respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Register and receiver at .

202 *Locations made by land-warrants on pre-emptions not assignable.*

GENERAL LAND-OFFICE, *May* 23, 1856.

GENTLEMEN: By the act of 22d March, 1852, land-warrants and locations not pre-emptive are assignable, but you will understand it as the decision of the Department that where locations are made by pre-emptors of their rights under the act of 4th September, 1841, such pre-emption locations are not assignable, for the reason that there is an

express inhibition in the said act of 1841 against the transfer of pre-emptions.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Register and receiver.

Pre-emption appeal.

GENERAL LAND-OFEICE, *August* 11, 1858.

GENTLEMEN: By the 10th section of an act of Congress approved 12th June, 1858, the right of appeal, as heretofore provided by the act of 1841, to the Secretary of the Interior, from decisions of the district officers in contested pre-emption cases, now lies to the Commissioner of the General Land-Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior. Whenever,
203 therefore, a party in such case shall enter his appeal, through your office, from the decision of this Office, such appeal will be held and regarded by you as a supersedeas against all further proceeding, until such appeal has been determined and you notified thereof by this Office.

A party may appeal through your office or directly by communication to this Office. If he choose the former mode, it your duty to transmit his appeal without delay to this Office.

Respectfully, &c.,

THOS. A. HENDRICKS,
Commissioner.

Register and receiver.

Circular.

GENERAL LAND-OFFICE, *November* 1, 1858.

Annexed is a copy of the act of Congress, approved June 3, 1858, declaring the title to land-warrants in certain cases.

In virtue of this act, the title to land-warrants, issued after the death of the warrantee, vests in the "widow," if there be one, and, if there be none, in the heirs or legatees of the claimant.

All such warrants are declared "personal chattels," and may be assigned by such "widows," "heirs," or "legatees," or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only.

To make a warrant when issued to deceased persons available, it should be accompanied by a certificate under seal from a court having jurisdiction of probate matters, giving the date of the decease of
204 the claimant:

1st. If he died before the date of the warrant, then the name of his "widow" should be stated in that certificate, if there be one, whose assignment will be *will be* sufficient in the ordinary form.

2d. If no widow, that fact should appear in the certificate of the probate, showing the names of the heirs and only heirs at law of the claimant, naming such as are adults and such as minor. If all are adults, then their simple transfer is all that is required on the warrant, to which the certificate of the probate court must be appended; if some or all are minors, they may assign, by their guardians, whose letter of guardianship should also be appended.

3d. If the claimant died after the date of the warrant, then the title thereto descends according to the law of domicil.

In this class of cases, if the claimant died intestate, there should be a certificate from the probate court, giving the names of the heirs and only heirs at law, who, if adults, may assign as in ordinary cases, and, if minors, may assign by guardians as aforesaid.

If the warrantee died testate, a certified transcript of the will should be annexed, with an assignment by the legatees or by the executors, where the will does specifically dispose of the warrant; but in that case a transcript of the letters testamentary must accompany the transfer.

4th. Or in any one of the foregoing cases of intestacy, the warrant may be assigned by the administrator of the decedent as his
205 legal representative "for the use of the heirs only," but the assignment must be accompanied by a certified copy of the letters of administration.

5th. In virtue of the 2d section of said act of 3d June, 1858, warrants under the act of 1855, as well as those issued under previous laws, may be applied to lands "which are subject to entry at a greater minimum than $1.25 per acre by the locator paying," in cash, "the difference between the value of such warrants at one dollar and twenty-five cents per acre, and the tract of land located on."

Thus, for example, 160-acre warrant may be located on 160 acres, at $2.50 per acre, and the difference, $200, paid in cash, or two warrants of 80 acres, or four warrants of 40 acres, may be applied to 160-acre tract; each, however, to be located on a specific legal subdivision of the 160 acres, and the difference, $200, must in all cases be paid in cash.

6th. In regard to all pre-emptions at one dollar and twenty-five cents per acre, it is held that a pre-emptor may use one, two, or more warrants in locating the land pre-empted, each warrant to cover a specific subdivision of the land; that is, a 40-acre warrant must be located on a specific 40-acre tract, an 80 on an 80-acre tract, and so on.

When a subdivision is fractional and overruns the number of acres called for by the warrant, the fractional excess must be paid for in cash.

In all respects, except so far as qualified by the foregoing, the circular and its forms of 3d May, 1855, will govern in regard to bounty-land warrants.

206 The following general sections are added for the information of parties interested:

7th. Patents for bounty-land locations are issued in the exact order of date of location, and are sent to the district land-office for delivery, unless, before the transmission, a party files in this office the duplicate certificate, when the patent will be sent to such address as the owner may indicate.

8th. When the duplicate certificate is lost, the patent will be delivered upon the patentee filing in this office his affidavit, stating the fact of its loss, and that it was not assigned by him, and that he is the present bona-fide owner of the land.

9th. When an original warrant which had been assigned is lost, and a duplicate warrant is issued in lieu of it, a new assignment must be endorsed thereon from the warrantee, or, in default of that, a decree of title must be obtained from a court of competent jurisdiction, and a transcript thereof appended to the duplicate warrant.

THOS. A. HENDRICKS,
Commissioner.

Approved:
J. THOMPSON,
Secretary of the Interior.

An act declaring the title to land-warrants in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when proof has been or shall hereafter be filed in the Pension Office during the life-
207 time of a claimant, establishing to the satisfaction of that office his or her right to a warrant for military services, and such warrant has not been, or may not hereafter be, issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in the widow, if there be one, and, if there be no widow, then in the heirs or legatees of the claimant; and all such warrants, and all other warrants issued pursuant to existing laws shall be treated as personal chattels, and may be conveyed by assignment of such widow, heirs, or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only.

SEC. 2. And be it further enacted, That the provisions of the first section of the act, approved March twenty-two, eighteen hundred and fifty-two, to make land-warrants assignable, and for other purposes, shall be so extended as to embrace land-warrants issued under the act of the third March, eighteen hundred and fifty-five.

Approved June 3, 1858.

Regulations in reference to appeals.

GENERAL LAND-OFFICE, *January* 24, 1859.

The following regulations are established by authority of the Secretary of the Interior, communicated to this office in his letter of 21st instant, in relation to appeals to his Department proper, and will be observed and enforced from and after this date.

208 In every case where an appeal may hereafter be taken from the decision of this Office, the party appealing or his attorney will be required to notify the Office in writing of the points of exception to its action.

An opportunity will also be offered to other parties interested in the case to be heard if desired, and a reasonable time will be allowed.

All parties to such appeals will be required to file in this Office all arguments and documents of whatever character, before the cases are submitted to the Department, in order that they may be referred to and considered in our report to the Secretary, if deemed expedient.

In submitting cases on appeal, particular care will be taken to state the question or questions at issue and the grounds of appeal, and the action of the Department will be confined to those questions alone unless sufficient cause should appear for looking beyond them.

THOS. A. HENDRICKS,
Commissioner of the General Land-Office.

209 *Pre-emption instructions issued Nov'r* 1860.—*Certificate.*

GENERAL LAND-OFFICE,
November 2nd, 1867.

I, Joseph Wilson, Commissioner of the General Land-Office, do hereby certify that the annexed printed circular, "Pre-emption instructions under acts of Sept. 4th, 1841, August 26th, 1842, March 3rd, 1843, May 8th, 1846, General Land-Office, November, 1860," containing instruc-

tions to registers and receivers dated September 15th, 1841, on pages 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, & 16, inclusive, and May 8th, 1843, on pages 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37, inclusive, is a true and literal exemplification of the original from the records of the Office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this Office to be affixed at the city of Washington, on the day and year above written.

JOS. S. WILSON,
Commissioner of the General Land-Office.

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211 *Circular—May* 4, 1863.

Circular.

GENERAL LAND-OFFICE, *May* 4, 1863.

GENTLEMEN: Annexed is a copy of an act of Congress, approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts."

By this act there is granted to the several States, for the purposes and on the conditions therein named—

First. An amount of public lands equal to 30,000 acres for each Senator and Representative in Congress to which such States are respectively entitled by the apportionment under the census of 1860, the tracts to be selected from the public lands of the United States subject to private entry at $1.25 per acre, or selections may be made from the $2.50, or double minimum; but in the latter case the lands are to be computed at the maximum prices, and the number of acres proportionately diminished; but no mineral lands are to be selected, and no selections allowed of a quantity less than a quarter-section.

Second. Whenever there are public lands in a State of the class contemplated by the act, the quantity to which such State is entitled is required to be selected within the limits of such State. Where there are no public lands in a State, or where there are not sufficient to satisfy the grant, the Secretary of the Interior is required to issue land-scrip in acres to the amount of the deficiency.

212 Third. Such scrip is not to be located by a State, but to be sold by such State, and located by the assignees upon any of the unappropriated lands of the United States, subject to entry at $1.25 acres, with a proviso in section 2, that not more than one million acres shall be so located in any one of the States, and a further proviso, that no location with scrip shall be made before one year from the passage of the act.

This proviso does not operate to prevent the locating of the scrip in any of the Territories of the United States after January 1, 1863, according to section 6 of the said act, which applies to locating scrip upon any of the public land, except what lie within the limits of a State.

Sections 3, 4, and 5, relating to the conditions and management of the grant, contain matter for the consideration of the States and the department, to which your attention is not specially called, except—

Fourth. The "fifth" condition of the grant, section 5, by which the selection of the double-minimum lands is permitted, "provided they

shall be computed to the States at the maximum price, and the number of acres proportionately diminished."

Fifth. This class of lands at $2.50 per acre, it will be observed, is liable to selection by the States only, and cannot be located by assignees with scrip, as the location of scrip is by the 2d section confined to lands at $1.25 per acre.

Sixth. Section six is covered and controlled by the last proviso to section 2, so far as scrip to be located in a State is concerned, declaring scrip not locatable in a State for one year from the passage
213 of the act; but scrip may be located in a Territory after January 1, 1863.

Seventh. Section 7 fixes the fees to land-officers, under the act authorizing them to receive the same fees for locating scrip "as is now allowed for the location of military bounty-land warrants;" provided their maximum compensation shall not be increased thereby.

It will be observed that no fees whatever are allowed by the act for selections made within any State for the use of such State, but only upon scrip-locations by assignees of a State, to be paid by locators.

Section 8 merely relates to the duties of governors of States in connexion with the grant.

For the information of all concerned, you are advised that, in carrying out the provisions of this act, the following course will be pursued:

Whenever satisfactory evidence shall be furnished that any State has accepted the grant in the mode provided by "seventh" condition, section 5, and such State contains public lands, this Office will issue its certificate under seal, setting forth the fact, and stating the quantity to which such State may be entitled. Upon the presentation of this certificate by the duly-authorized agent of the State, at any United States land-office within the State, together with evidence of his authority to make the selections, which must be an appointment by the governor under the seal of the State, he will be permitted to select the quantity to which the State may be entitled, or any portion thereof, and it will be your duty to afford him every facility for so doing.

214 The locating-agent will file with the register and receiver a list of the tracts selected by him, with his application thereto attached to locate said tracts pursuant to the act; and if, on examination, said list shall be found by you to be free from objection—that is, that the selections are of lands subject to private entry at $1.25 or $2.50 per acre, and that there is no pre-existing claim thereto, that they do not embrace mineral lands or other reserved lands, and they are otherwise in conformity to the act—you will cause an abstract of the same to be prepared, certify the facts as above, with the date of selection, (the date of filing with you the application by the agent being regarded as the date of the selection,) and which date will be regarded as the period of withdrawal of a tract from market.

You will be careful that all cases of selection of $2.50, or double-minimum, lands shall be specially noted in your return, in order that they may be properly charged at double the area of the tract in the adjustment of the grant.

The restriction of selections to quantities "not less than one-quarter of a section" is not to be understood as forbidding the selection of a legal subdivision or fraction less than a quarter-section; but every such legal subdivision or fraction applied for and selected must be charged to the State as a quarter-section, or 160 acres, in accordance with the established practice of the Department in similar cases.

The selections must be posted in the tract-books in red ink, each entry

showing the date of location, (application,) and the No. and date of General Land-Office special certificate upon which such location was made.

215 When there are not sufficient public lands in a State to satisfy the grant, the deficit will be made good by scrip, as provided by the 2d section; and when there are no public lands, scrip will be issued for the whole quantity.

No scrip, as shown in the foregoing, will be locatable in any State until July 2, 1863—one year from the passage of the act.

It is the duty of the register and receiver, at the close of each month, to make a duly-certified return, separate from the returns of ordinary land-operations, showing the tracts selected, date, by whom, and certifying the same to be correct.

When no such selections may be made within a month, a note to this effect should be appended to the other monthly returns:

"No agricultural selections made at this office during the month of

" , *Register.*
" , *Receiver.*"

J. M. EDMUNDS,
Commissioner.

An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and mechanic arts.

216 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State, a quantity equal to thirty thousand acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: Provided, That no mineral lands shall be selected or purchased under the provisions of this act.

SEC. 2. And be it further enacted, That the land aforesaid, after being surveyed, shall be apportioned to the several States in sections or subdivisions of sections not less than one-quarter of a section; and wherever there are public lands in a State subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said State shall be entitled shall be selected from such lands within the limits of such State; and the Secretary of the Interior is hereby directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre, to which said State may be entitled under the provisions of this act, land-scrip to the amount, in acres, for the deficiency of its distributive share; said scrip to be sold by said States, and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever: Provided, That in no case shall any State to which land-scrip may thus be issued be allowed to locate the same within the limits of any other State or of any Territory of the United States, but their assignees may thus locate said land-scrip

217 upon any of the unappropriated lands of the United States subject to sale at private entry at one dollar and twenty-five cents or less per acre: And provided further, That not more than one million

acres shall be located by such assignees in any one of the States: And provided further, That no such location shall be made before one year from the passage of this act.

SEC. 3. And be it further enacted, That all the expenses of management, superintendence, and taxes, from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied, without any diminution whatever, to the purposes hereinafter mentioned.

SEC. 4. And be it further enacted, That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land-scrip hereinbefore provided for, shall be invested in stocks of the United States or of the States, or some other safe stocks yielding not less than five per centum upon the par value of said stocks, and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, (except so far as may be provided in section fifth of this act,) and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this act, to the endowment, support,
and maintenance of at least one college, where the leading object
218 shall be, without excluding other scientific and classical studies,
and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in several pursuits and professions in life.

SEC. 5. And be it further enacted, That the grant of land and land-scrip hereby authorized shall be made on the following condition, to which, as well as the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

First. If any portion of the fund invested as provided by the foregoing section, or of any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied, without diminution, to the purposes mentioned in the fourth section of this act, except that a sum not exceeding ten per centum upon the amount received by any State under the provisions of this act may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures of said States.

Second. No portion of said fund nor the interest thereon shall be applied, directly or indirectly, under any pretence whatever, to the purchase, erection, preservation, or repair of any building or buildings.

Third. Any State which may take and claim the benefit of the provisions of this act shall provide, within five years, at least, not less
219 than one college as described in fourth section of this act, or the
grant to such State shall cease, and said State shall be bound to pay the United States the amount received *of* any lands previously sold, and that the title to purchasers under the State shall be valid.

Fourth. An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their cost and results, and such other matters, including State industrial and economical statistics, as may be supposed useful, one copy of which shall be transmitted by mail, free, by each to all the other colleges which

may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior.

Fifth. When lands shall be selected from those which have been raised to double the minimum in price in consequence of railroad-grants, they shall be computed to the States at the maximum price and the number of acres proportionately diminished.

Sixth. No State while in a condition of rebellion or insurrection against the Government of the United States shall be entitled to the benefits of this act.

Seventh. No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the President.

SEC. 6. And be it further enacted, That land-scrip issued under the provisions of this act shall not be subject to location until after the first day of January, one thousand eight hundred and sixty-three.

220 SEC. 7. And be it further enacted, That the land-officers shall receive the same fees for locating land-scrip issued under the provisions of this act as is now allowed for the location of military bounty-land warrants under existing laws; provided their maximum compensation shall not be thereby increased.

SEC. 8. And be it further enacted, That the governors of the several States to which scrip shall be issued under this act shall be required to report annually to Congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Approved July 2d, 1862.

221 GENERAL LAND-OFFICE, *November 4th*, 1867.

I, Jos. S. Wilson, Commissioner of the General Land-Office, do hereby certify that the annexed printed circular, dated "General Land-Office, May 4, 1863," is a true and literal exemplification of the original from the records of this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JOS. S. WILSON,
Commissioner of the General Land-Office.

222

223 Plaintiff read in evidence the act of the general assembly of Missouri incorporating the town of Carondelet, approved Aug. 20th, 1832.

Defendants objected. Objection overruled, and defendants excepted.

Plaintiff then read in evidenee poll-books of the town of Carondelet, showing Thomas Chartrand to have voted in said town of Carondelet at corporate elections for the years 1833, '34, '35, '36, '37, '38, & 1840, '1, '2, and '3.

Also records of the proceedings of the special council of said town for 4th August, 1834; 6 April, 1835; April, 1836; September, 1837; 2nd April, 1838; April, 1840; April, 1841, (No. 47;) April, 1842, (No. 28,) and April, 1843, (No. 1,) to show that he (Thomas Chartrand) was an acting member of said council of Carondelet during said years.

The above record and roll-books, and each of them, were then and there objected to by defendants as irrelevant and incompetent, and inadmissible to *the* contredict the pre-emption record; but it was admitted

subject to objection, and the defendants then and there excepted to the ruling of the court.

Testimony of Peter D. Barada.

Plaintiff then called PETER D. BARADA, who testified as follows: I reside in Carondelet, and have since 1833. I knew Thomas Chartrand most of the time. I knew him; he lived in Carondelet. I believe I was a member of the council in 1838; C'artrand was also a member. I can't say whereabouts in the town ; he lived in the town at the time of his death. I believe he lived for a short time out of the town, but don't recollect what time. Remember his wife had twins, but can't
224 say at what time, or where he resided. Can't tell how long he lived in the town continuously prior to his death. I know where the cow-spring is. The north line of the town of Carondelet is two & a half blocks south of the land in controversy.

Cross-examination:

I am a little over seventy-one years of age. Never saw Chartrand occupying this land, but I saw a house there, built by my brother, in 1825 or 1826; don't know to whom he sold it; never saw Chartrand occupy it; never was there when he was. The house that my brother sold was just at the end of the arpent my father owned; was 50 or 60 yards east of the Stringtown road, and was on the fractional section. It was a log house; my father had the first possession; he was succeeded by my brother, and my brother sold it to Chartrand. Don't know who was in possession since 1833. I always came to town (St. Louis) by the old road, next to the river; seldom or never went by the road called the Stringtown road.

Redirect examination:

Don't know when Thomas Chartrand, jr., came of age.

Defendant made the same objection and exception to this testimony as last above stated, and the court admitted the testimony; to which ruling of the court the defendants then and there objected and excepted.

Testimony of Edward Chase.

Plaintiff then introduced EDWARD CHASE, who testified as follows, subject to the same objection and exceptions as last above:

I reside on the Carondelet road. I know this land; it has been held in possession of John Allen, as tenant of Wm. M. McPherson, for the last 10 or 12 years, and for the last 3 or 4 years just before that by a tenant of plaintiff, but his name I can't recall. I know his
225 name, however, very well. It was always under fence until a year or two ago, when the fence began to give way and was carried off.

Cross-examination:

Mr. McPherson has never lived there.

Testimony of Wm. M. McPherson.

WM. M. MCPHERSON, plaintiff, was then introduced as a witness, and testified: That at the time I made the purchase from Cowles this land was all fenced east, and most of the west, of the road, and all but 8 or 9

acres west of the road, (the old Carondelet road is here spoken of.) Paddleford, then Tuttle, then Smith, was in possession immediately after patent was issued to me, and the 4-arpent tract was granted by me. I enclosed the whole with fence, and it has been in my possession all the time, by my tenants, from time of my purchase up until present time, from 1850; all I claimed has been fenced. Fence has been taken down within last two or three years, but tenants are in possession.

Cross-examination:

The controversy between me & heirs of Thomas Chartrand began in 1862. I knew of the affidavits filed in 1851 or 1852, I think, but I supposed that was all settled. I knew of the old affidavits at the time they were there, and I enclosed to the Land Department a copy of my deed to Thomas Chartrand, jr. I knew of the controversy between St. Louis and Carondelet, about their respective claims to the commons, before the Land Commissioner and the Secretary of the Interior. I objected to their extending the line of the Carondelet commons north of the Sugar Loaf. I was before the Land Commissioner at Washington about it. My location of this land was made before the conclusion of the controversy before the Land Commissioner. I claimed a possessory right before my purchase from the State under Cowles. I never lived on this land. I never knew Chartrand, sr. I saw Thomas Chartrand,
226 jr., as early as 1848 or '49. I think he lived on the west side of the Stringtown road. He had a house also on the east side of the road. I never lived on this land. I had possession there by tenant. I have been twice in Washington—twice about this claim—and employed counsel. I also may have filed a brief. Thomas Ewing, jr., was employed by parties to whom I gave a deed of trust, but I paid the note secured by the deed, and also paid Ewing's fee; I also employed Beard. The first time I saw the land there was a fence on it, but there was a new fence built before I bought. I bought in March, 1848. I extended the new fence so as to take in two or three acres on the west, which was not embraced in it.

To all of this testimony the defendants made the same objection as last above, and same exceptions to its admission.

Plaintiff rests.

Defendants moved to dismiss the bill for want of equity and for want of juris'ction of the court. Motion was overruled, and defendants excepted to the ruling of the court.

DEFENDANT'S TESTIMONY.

Carondelet commons.

Defendant's counsel read in evidence survey for the inhabitants and trustees of the town of Carondelet, by a Rector, dated 1818; also the retracing of that survey by Brown, in 1834, contained at pages 24, 25, & 26, of the record of the Carondelet Commons, also plat at page 45, book called Carondelet Commons.

Instructions from Wilson, Commissioner of Land Department, to surveyor-general, at St. Louis, dated Feb'y 5th, 1853.

Defendants then read in evidence the instructions from Wilson,
227 Commissioner of the Land Department, to the surveyor-general, at St. Louis, dated February 5th, 1853, as follows:

(See page 393 of this transcript.)

228
229 *Carondelet commons.*

The defendants then read in evidence the controversy concerning the commons of the town of Carondelet, in book called the "Carondelet Commons," from page 282 to 325.

Carondelet commons.

Defendant then read the final decision of the Department of the Interior, on the 25th of January, 1853, from said record or book called "Carondelet Commons." (See page 394 of this transcript.)

Deed—McPherson to Shepley & Humphreys.

Defendant then read in evidence a deed from Wm. M. McPherson to John R. Shepley and George D. Humphreys, with power of sale, dated 7th March, 1860, as follows:

This deed, made and entered into the seventh day of March, eighteen hundred and sixty, by and between William M. McPherson and Mary A. McPherson, his wife, of the city of St. Louis, and State of Missouri, parties of the first part, George D. Humphreys, and John R. Shepley, of the same place, parties of the second part, and Edward D. Morgan, George D. Morgan, John T. Terry, & John Humphreys, composing the firm of E. D. Morgan & Co., of New York, parties of the third part, witnesseth: That the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm, unto the said parties of the second part, the following-described tract or parcels of land, situate in St. Louis County, and in fractional section township 44 north,
230 range 7 east, and bounded and described as follows: First, that portion of said section, being east of the Carondelet road and bounded east by the Mississippi River, south by property of Alex. & H. Kayser, west by said road, and north by the St. Louis common, containing eleven acres; second, all that part of said fractional section nine that lies west of the said Carondelet road and remaining unsold by said McPherson, being a tract of fourteen acres, bounded east by the Carondelet road and land heretofore conveyed to the city of Carondelet & A. H. Menkins, in compromise, north in part by said last-mentioned land and in part by the St. Louis commons, west by land of Delore and Chartrand, and south by the north line of the city of Carondelet.

To have and to hold the same, together with all the appurtenances, to the said parties of the second part, and to the survivor of them, and to the heirs and assigns of such survivor, forever; in trust, however, for the following purpose: Whereas the said parties of the third part have agreed with said William M. McPherson, for the accommodation of said McPherson, to accept for said McPherson the draft or bill of exchange that may, during the space of twelve months from the date hereof, be drawn by him upon them in such sums and for such amounts as he may desire, so that the account for which they shall, at any time during said twelve months, be under acceptance for said McPherson shall not exceed the amount of forty thousand dollars, all of which drafts are to be drawn payable four months after the date thereof: Now, if the said William M. McPherson shall at all times pay, take up, and provide for

each and every one of said drafts that may be so drawn and accepted as aforesaid, when the same became due and payable according
231 to the tenor thereof, as that said parties of the third part shall not be obliged to take up and pay the same, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part; but if said McPherson, or his legal representatives, or some one in his behalf, shall fail to take up and pay each and every the drafts that may be drawn by him as aforesaid, & accepted by said parties of the third part, so that the same shall be in arrears and unpaid, or any of them, or any part of any, then this deed shall remain in force, and the said parties of the second part, or either of them, or the survivor of them, or the heirs or assigns of such survivor, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the east front door of the court-house, in the city of St. Louis, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in said city of St. Louis, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which they shall pay, first, the costs and expenses of this trust, and next, all of said drafts or bills of exchange remaining unpaid to the said parties of the third part, if they shall have taken up and paid them, or, if not, then to the holder or holders of such drafts, and the remainder, if any, shall be paid to the said William M. McPherson, or his legal representatives. And the said parties of the second part covenant faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties of the first part have here-
232 unto set their hands and seals the day and year first above written.

Erasure made, words "property of Alex. & Henry Kayser" written over it, & words "St. Louis" interlined before signing.—J. R. SHEPLEY.

WM. M. McPHERSON. [SEAL.]
MARY A. McPHERSON. [SEAL.]
JOHN R. SHEPLEY. [SEAL.]

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this seventh day of March, A. D. eighteen hundred and sixty, before me, the undersigned, a notary public in and for the county aforesaid, came William M. McPherson and Mary A., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned. And the said Mary A. McPherson, having first been by me made acquainted with the contents of the foregoing conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

[SEAL.]

EPHRAIM G. OBEAR,
Notary Public, St. Louis County.

Filed and recorded March 7th, 1860.

C. KEEMLE,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss:

233 I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed made by Wm. M. McPherson & wife to the trustees of E. D. Morgan & Co., together with acknowledgement, date of filing & recording thereof, as the same remain on record in my office, in book 230, page 513.

Witness my hand and official seal this 15th day of May, 1871.

[SEAL.] W. C. KENNETT, *Recorder*,
Pr A. TETARD, *D. Recorder.*

McPherson recalled.

McPherson recalled; testified this deed of trust was paid off before this suit.

U. S. patent to Chartrand heirs.

Defendants then read in evidence the patent to the heirs of Thomas Chartrand, sr., decd., from the United States dated 21st of July, 1866. (See page 137 of this transcript.)

Deed—McPherson to Chartrand, jr.

Defendants next read in evidence deed from William M. McPherson to Thomas Chartrand, jr., heretofore read by plaintiff and considered in evidence. (See page 108 of this transcript.)

Watson's certificate.

Defendant then read in evidence the official certificate of Thomas Watson of claim of pre-emption filed by Thomas Chartrand, jr., being Exhibit L, No. 12, of record No. 9. (See page 119 of this transcript.)

Boardman's certificate of declaratroy statement by T. Chartrand, jr.

Defendants next read in evidence the certificate of George W. Boardman, register at Boonville, Mo., of the declaratory statement of
234 Thomas Chartrand, jr., being Exhibit A, No. 1, of record No. 9. (See page 96 of this transcript.)

Suit between Carondelet & St. Louis.

Defendants next read in evidence the record of the controversy or suit between Carondelet and St. Louis, showing date of the commencement and termination of said suit, involving the title of fractional section nine here sued for, commenced October term, 1853, terminated spring term, 1862. (Here set out the record of the said suit, embracing the petition, the answer, the entry of trial, and judgment in the State and Federal courts.) (See page 239 of this transcript.—*Clerk.*)

The evidence of Thomas W. Levant was offered by defendants, and out of its regular order by consent, but is here inserted in its proper place:

Testimony of Thomas W. Levant.

THOMAS W. LEVANT, being called by defendant, testified as follows: I am 84 years of age; have lived 30 odd years in Carondelet; knew Thomas Chartrand, sr., in Carondelet, since about 1840; knew something of fractional sec. 9; went over the land with old man Chartrand in 1844. When I knew it first there were two houses on it—one old, one new; knew Thomas Chartrand, jr., to be possession in 1845 or 1846, along there. Thomas Chartrand, jr., held possession, after the new building *in* on sec. 9, 1845; went out to the place in 1844, with Thomas Chartrand, sr.; showed me a certificate signed by Dallam that same day on the place; was occupied by a tenant, whom Chartrand said was his tenant; don't know whether he paid rent to Chartrand. Mr. Leffer resided there as Thomas Chartrand' tenant in 1845 or 1846. The Chartrands were still in possession when I came back from
235 the war, on 16 Oct., 1848. Somebody was in possession in 1849; always understood they were tenants of the Chartrands. I passed over the land with Chartrand, sr., in 1844, and he told me the land was his, and he showed his certificate of pre-emption; understood the Chartrands always claimed the land.

Cross-examination:

I knew Chartrand since 1840; when I first knew him I am not positive, but know that he was on that tract at the time. He could live out in the bushes and be in the council too; not particular where they gathered them. There were houses south of Peach Creek. They were not very particular, but supposed Mr. Chartrand lived in the old town; he lived in town nearly all the time I knew him. I stayed with his family in 1844. He lived in block 9, same neighborhood Barada lived; knew only by hearsay where he lived; did not know Richard B. Dallam. Dallam's son served with me in 1846. I presume it was Dallam's signature. I read it to him. He (old man Chartrand) was an honest but illiterate man, and would get me to read his papers for him. Afterwards I knew young Dallam and told him I had seen the certificate of his father. Knew Thomas Chartrand, jr., 10 or 12 years. He was a young man, say 20, when I knew him in 1840. He was 20 or 21 years of age. Am not positive Chartrand, jr., showed me any papers.

Testimony of Michael Chartrand.

MICHAEL CHARTRAND, being introduced by defendants, testified as follows:

Am 45 years old; know sec. 9. We have had something to do with this land. My recollection of it was since 1835, when my father moved on it. There was a log-house on it, with a fence in front and one in the rear when we moved on it. Their twin children, Felix and Paschal,
236 were born there. My father lived there or near , and then moved and went back to Carondelet. Laffler occupied it 4 or 5 years as my father's tenant. They were cropping on shares. After Laffler left, one party and another occupied it under my father until his death in 1845. I was about 15 years old in 1845. My father did not live on it himself from '38 till his death; recollect a new house was built there in 1846 or '7. Timber was prepared before my father's death. He intended to build. A man by the name of Grassford occupied it at the time of my father's death; don't know exactly whether it was one or two years before my father's death the timber was there. After my father's death

Thomas took possession and kept possession adverse to Mr. McPherson, and remained there until he died in 1855. Then I took hold, then Joseph—he was fourth son; can't say how long Joseph was there. Thomas was in possession invariably for the heirs. Joseph went in with Thomas a year or two before he died. I succeeded them, and hold until the present day; held ever since 1847; employed Blair, Coleman, and others. First thing I knew of McPherson making any claim was when he applied for a lease from Old Carondelet in 1849. I was register of the town, & his petition was not considered; first saw him in possession in 1851.

Cross-examination by plff.:

Didn't see you in possession till '51; never saw a fence on the place, except on the east side of the road, until 1851. My recollection don't serve me whether there was a fence on the west side of the road. Never before '51 did I see a plank fence there; was there time and again. When I returned, in 1851, the plank fence was there. My father lived in block 9 when he died. My father owned the property where
237 he resided. My father made a fence on section 9, and lived there one year. At Carondelet they took the votes of the old residents, no matter where they lived. We lived on the common-fields but a short while, and then moved back to town. I conveyed my interest to Antoine, and then to Coleman. My brother Thomas has two children; one is of age; both sons; and still employed fighting this title for the family. My lease extends to McPherson's fence on the east. Old residents living out in the commons would come in to vote.

Carondelet commons.

Defendant then read in evidence record of controversy, called Carondalet commons, pages 258 to 270, inclusive, following, showing—

1st. Letter of instruction from William Milburn to Arthur L. McGinnis, dated 18th May, 1845. (See page 258 of this transcript.—*Clerk.*)

2nd. Letter from William Milburn to Atkinson, date' 1st of August, 1839. (See page 258 of this transcript.—*Clerk.*)

3rd. Claim to commons, 7th June, 1808. (See page 260 of this transcript.—*Clerk.*)

4th. Supposed grant, 6th Dec., 1796.
Answer, 7th " 1796.
(See pages 260 and 261 of this transcript.—*Clerk.*)

5th. Report of Antoine Soulard, 17th July, 1796. (See page 261 of this transcript.—*Clerk.*)

6th. Report of A. M. Whitcomb, 4th Sept., 1839. (See page 263 of this transcript.—*Clerk.*)

238 7th. Letter of Burches Salt, 6th Aug., 1839. (See page 265 of this transcript.—*Clerk.*)

8th. Report of Wm. Milburn, 5th Dec., 1839. (See page 268 of this transcript.—*Clerk.*)

9th. Report of Wm. Milburn, 14th Dec., 1839. (See page 268 of this transcript.—*Clerk.*)

10th. Letter from Milburn to Whitcomb, dated 29th February, 1840. (See page 269 of this transcript.—*Clerk.*)

Defendants then read in evidence the whole record of Carondelet commons, from pages 258 to 325, inclusive, heretofore affixed. Objected to by plaintiff, being irrelevant, and objection sustained, and defendants objected and excepted.

Carodelet commons.

Defendants then read in evidence the report of William Milburn, from page 260 and to p. 336, inclusive, from said Carondelet commons, as touch the merits of the case.

Plaintiff objected to the same as being irrelevant, and objection was sustained. Defendants excepted. (See pages 258 to 407, inclusive, of this transcript.—*Clk.*)

Defendants then read, by consent, the testimony of William H. Cozens before Ben. F. Hickman, U. S. commissioner, and plat of survey, marked "Exhibit No. 9."

(For Cozens' testimony see page 87 of this transcript.
" plat of survey " 118 " " ")

239 Supreme Court of the United States.

THE CITY OF CARONDELET, PLAINTIFF IN error,
vs.
THE CITY OF SAINT LOUIS, DEFENDANT IN error.

No. 27. Error to supreme court of Missouri, held at Saint Louis.

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245 *Petition.*

STATE OF MISSOURI,
County of St. Louis:

Be it remembered, that on the sixteenth day of February, in the year of our Lord one thousand eight hundred and fifty-five, there was filed in the office of the clerk of the St. Louis land court a petition; which petition is in the words and figures following, to wit:

In the St. Louis land court of March term, 1855.

THE CITY OF CARONDELET, PLAINTIFF,
vs.
THE CITY OF ST. LOUIS, DEFENDANT.

Plaintiff, a body politic and corporate in the State of Missouri, states that the town of Carondelet, now a city, in the county of St. Louis, in said State, was, prior to the 20th day of December, 1803, and for more than thirty years before then, a Spanish town or village, and for several years before and after the year 1803, the inhabitants of said town or village used and possessed, according to Spanish law and usage in Spanish provinces, a certain tract of land in said county, adjoining the said town or village on the north, as commons belonging to said town, now city of Carondelet.

That some time between the years 1796 and 1800, the northern line of said Carondelet common was marked and surveyed by Don Antonio Soulard, the Spanish surveyor for the province of Upper Louisiana, pursuant to an order made by the lieutenant-governor of said province, and published at the church-door of St. Louis, the adjoining town on the north, which line was run by the said Spanish surveyor, in the presence of certain inhabitants of each of said towns, and commenced on the bluff bank of the river Mississippi, at the Sugar-Loaf, a mound so called, about four miles south of St. Louis and two miles north of Carondelet, and running thence westwardly, for direction, to the northeast corner of the common-fields of Carondelet; and monuments were estab-

lished upon said line at the east and west ends, and the line was marked by cutting the trees thereon and piling the brush as a temporary fence along the line; and the said town and inhabitants of Carondelet possessed, as their common, on the north of the town of Carondelet, the land bounded by the said line so run on the north, the Mississippi River on the east, the town or village of Carondelet on the south, and the common-fields of Carondelet on the west, and continued to pos-
246 sess and use the same as commons of said town of Carondelet from 1796 until the 20th day of December, 1803, and for several years thereafter, and continued to claim, and did claim, the said land as commons belonging to said town, on the 13th day of June, 1812.

And plaintiff avers that the said tract of land so used as said common was confirmed to the inhabitants of said town or village of Carondelet by the act of Congress passed and approved on the 13th day of June, 1812, absolutely, without any condition whatever, under and by virtue of the first section of said act of Congress, and that thereby the said inhabitants of said town or village of Carondelet became the absolute owners of the whole of said tract of land in fee-simple; and the said inhabitants of said town, in Spanish times, prior to the 20th day of December, 1803, consisted of about forty families, and at the time of the passage of said act of 1812 there were about the same number of families, a large majority of whom were primitive settlers or descendants of the primitive settlers upon the lands at Carondelet in Spanish times.

And plaintiff avers that it has succeeded to all the rights and title of the said inhabitants of Carondelet in and to said tract of land claimed and confirmed as commons, and that the said city of St. Louis, in fraud of the rights of the said inhabitants of Carondelet, then a town, did, some time in the year 1831, procure a survey of the commons of St. Louis to be made by the surveyor-general of Missouri and Illinois, pretending to act under authority of the Government of the United States, so as to run the south line of such survey nearly one mile south of the said Sugar-Loaf mound, from the river Mississippi to the Carondelet common-fields, which line forms the south boundary of blocks ninety-two, ninety-three, and ninety-four on a certain map of survey lately made for said city of St. Louis by C. E. Salomon, in May, 1854, which said survey of 1831, made as aforesaid, instead of being made as described, ought to have been made by running the south line so as to have followed the line of the Spanish survey made by Don Antonio Soulard as aforesaid, in accordance with the line of division established between the commons of St. Louis and Carondelet in Spanish times, and the respective possessions of said parties inhabitants of the said towns respectively under and after the said establishment of said division line up to and after the cession of the Territory of Upper Louisiana by Spain to France and by France to the United States.

And plaintiff avers that said United States survey of 1831 for St. Louis was made without any warrant or authority of law, and in violation and in fraud of the just rights of the said inhabitants of Carondelet as aforesaid, and so far as the said survey covers the ground embraced as aforesaid within the commons of Carondelet, the same is null
247 and void, and creates no right or interest thereunder in the city of St. Louis; and plaintiff insists that it be so held by the court upon principles of justice and equity.

And the plaintiff further states that the said city of Carondelet was, on the first day of January, 1855, lawfully entitled to the possession of, and claims title in fee-simple to, the north half of block ninety-three, the

east half of block eighty-nine, the southwest quarter of block eighty-eight, the southwest quarter of block eighty-three, and lots one and two in subdivision one, and lots from one to twenty-four in subdivision two, of lot four, as marked on said map of Salomon; the whole of said land and lots being within the commons of Carondelet in said county, as confirmed by the said Congress of the 13th day of June, 1812; and the plaintiff being so entitled to the possession thereof, the defendant afterwards, to wit, on the second day of January, 1855, entered into such premises and unlawfully withholds from the plaintiff the possession thereof; and the said city of St. Louis claims to hold under said pretended and illegal survey of 1831, for color of title, and to throw a cloud upon the title of the plaintiff under said confirmation of 1812.

And the plaintiff asks judgment that the said survey of 1831, so far as it covers the commons of Carondelet, be set aside and held for naught, and that the plaintiff be put into the possession of said premises sued for, and that plaintiff recover as damages for rents and profits the sum of four thousand dollars and costs.

B. A. & D. W. HILL,
Attys. for Plff.

COUNTY OF ST. LOUIS, *ss:*

Anthony H. Menkens, agent for plaintiffs, being duly sworn, says that he believes the foregoing petition and the matters therein as stated are true.

A. H. MENKENS.

Sworn to before me this 16th day of February, A. D. 1855.
C. A. MANTZ, *Clerk.*
By J. B. WALSH, *Deputy.*

Summons.

Upon the filing of the above petition the clerk then issued to the sheriff of St. Louis county a summons; which summons is in the words and figures following, to wit:

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis county, greeting:

We command you to summon the city of St. Louis to appear before the judge of our St. Louis land court, on first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of March next, then and there to
248 answer the complaint of the city of Carondelet, as set forth in the annexed petition; and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this seventeenth day of February, in the year of our Lord eighteen hundred and fifty-five.

[SEAL.] CHARLES A. MANTZ, *Clerk.*

Sheriff's return.

Upon which summons the sheriff made his return in words and figures as follows, to wit:

Executed this writ in the county of St. Louis on the 17th day of Feb-

ruary, 1855, by delivering a copy of the same and petition, as furnished by the clerk, to John How, mayor of the city of St. Louis.

TURNER MADDOX, *Sheriff.*
By J. S. WILKINS, *Dep'ty.*

Answer filed.

And afterwards, to wit, on the 17th day of May, A. D. 1855, there was filed an answer in this cause, which answer is in the words and figures following, to wit:

Answer.

THE CITY OF CARONDELET, PLAINTIFF,
vs.
THE CITY OF ST. LOUIS, DEFENDANT.

The defendant comes and says that the said plaintiff is not legally entitled to the possession of the premises described in the petition of the plaintiff; and that plaintiff was not so entitled at the commencement of this suit.

The defendant says that the city of St. Louis is entitled, and was entitled at the commencement of this suit, to the premises in the petition of the plaintiff described, and to the possession thereof; and that said premises are parcel of the land confirmed to the inhabitants of the town of St. Louis, as common, by the first section of the act of Congress of 13th June, 1812, entitled an "Act making further provision for settling the claims to land in the Territory of Missouri."

And defendant denies that the premises mentioned in the petition as held adversely to the plaintiff, by the defendant, are part of any land confirmed to the said city of Carondelet, or to any person or persons under whom said city of Carondelet claims to hold.

249 And having so answered, the said city of St. Louis, defendant, prays to be hence dismissed with her reasonable costs.

THOS. T. GANTT,
City Counsellor.

Thomas T. Gantt, being duly sworn, says on his oath *says* he verily believes the aforegoing answer and the facts therein stated to be true.

THOS. T. GANT.

Sworn to before me this 17th day of May, 1855.

C. A. MANTZ, *Clerk.*
By J. B. WALSH, *Deputy.*

Amended petition filed.

And afterwards the following proceedings were had in this cause, to wit:

March term, 1855.—Tuesday, June 5th, 1853.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Amended petition filed.

(Amended petition withdrawn. See following entries.—Clerk.)

Jury sworn—Trial prog's'd and cont'd—Agreement of parties filed to with-d'w am'd petition—Amended petition withdrawn.

And afterwards the following further proceedings were had in this cause, to wit:

March term, 1856.—Friday, May 16th, 1856.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Now at this day come said parties, by their attorneys, and thereupon came also a jury, to wit: Peter Sibert, Philip Lutzinger, William Parker, Elija W. Payne, Nathaniel Robinson, Jesse Angel, John Clayton, Francis Ganaill, Alfred Smith, Frederick Coons, John Furrow, and Elihu Angel, twelve good and lawful men, who being duly elected, tried, and sworn well and truly to try the issues joined between the parties in this cause, and a true verdict give according to the evidence, wherefore the trial progressed; but not being fully ended at the adjournment of court, is continued until to-morrow.

Agreement of parties filed to withdraw the amended petition in this cause, and amended petition withdrawn.

250 *Trial continued.*

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, May 17th, 1856.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Now at this day come again the said parties, by their attorneys, and also come the jury heretofore sworn in this cause, and thereupon the trial progressed; but not being fully ended, this cause is continued till Monday, the 19th inst.

Trial ended.—Verdict for deft.

And afterwards the following further proceedings were had in this cause, to wit:

Monday, May 19th, 1856.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Now at this day come again said parties, by their attorneys, and also come the jury heretofore sworn in this cause; therefore the trial progressed, and being fully ended, the jury aforesaid, on their oaths aforesaid, say that they find for the defendant. Therefore it is considered that the said plaintiff take nothing by his said petition, but that the said

defendant go hence without day and recover of the said plaintiff their costs and charges in this behalf expended, and have thereof execution.

Judgment of supreme court filed—Judg't for plff., and cause remanded.

And afterwards the following further proceedings were had in this cause, to wit:

October term, 1857.—Thursday, January 28th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Judgment of the supreme court filed in this cause, which judgment was rendered in favor of the plaintiff, and cause remanded for a new trial.

Opinion of the supreme court filed.

And afterwards the following further proceedings were had in this cause, to wit:

251 Wednesday, February 17th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.
Opinion of the supreme court filed in this cause.

Special venire ordered and case set for trial.

And afterwards, to wit, on the same day the following further proceedings were had in this cause, to wit:

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.
Special venire ordered.

Now at this day come the attorneys for the plaintiff, and on their application it is ordered by the court that a special venire issue to the sheriff of the county of St. Louis, commanding him to summon eighteen good and lawful men, outside of the townships and cities of Carondelet and St. Louis, to try the issues in the case of the City of Carondelet vs. The City of St. Louis, set for trial on Monday, February 22d, 1858.

Which special venire is in the words and figures following, to wit:

Special Venire.

THE STATE OF MISSOURI,
The County of St. Louis:

To the sheriff of the county of St. Louis, greeting:

You are hereby commanded to summon eighteen good and lawful men of your county, (outside of the townships of St. Louis and Carondelet,) that they be and appear before our honorable St. Louis land court, now in session, on Monday, the twenty-second day of February, A. D. 1858, at the hour of ten of the clock of that day precisely, then and there to serve as a special jury to try the issues joined between the

City of Carondelet against the City of St. Louis, then and there to serve as jurors; and have you then and there this writ, with the names of those on whom you execute the same thereon endorsed.

Witness Charles A. Mantz, clerk of our St. Louis land court, with the sea thereof hereto affixed at office, in the city of St. Louis, this 18th day of February, A. D. 1858.

CHARLES A. MANTZ,
Clerk St. Louis Land Court.

Sheriff's return.

Upon which special venire the sheriff made his return in the words and figures following, to wit:

Executed this writ in the county of St. Louis, on the 22d day
252 of February, 1858, by summoning the following-named gentlemen to serve in the St. Louis land court, in the case of the City of Carondelet vs. The City of St. Louis, to wit: David Thomas, C. C. Wise, W. D. Sappington, Wm. M. Walton, Robert M. Hanna, Christopher Hawkin, Alex. Perry, Benjamin Douglass, Saml. James, John Higgins, Geo. M. Moore, Alex. McEllhaney, Auguste Aubuchon, Samuel Myerson, Dennis Crowley, Louis Hall, Colmore Nutt, Joseph Farrell, all good and lawful men of the county of St. Louis, and outside of the townships of St. Louis and Carondelet.

JAS. CASTELLO, *Sheriff.*
By JAS. OWENS, *Deputy.*

Dep'ns for plff. opened and filed.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, February, 20th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Depositions for the plaintiff opened and filed in this cause, (for which depositions see bill of exceptions.)

Jury sworn.—Trial progressed.

And afterwards the following further proceedings were had in this cause, to wit:

Monday, February 22d, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial begun.

Now at this day come said parties, by their respective attorneys, and thereupon come also a jury, to wit, David Thomas, C. C. Wise, W. D. Sappington, Wm. M. Walton, Robert M. Hanna, Alex. Perry, Benjamin Douglass, Samuel James, John Higgins, George M. Moore, Dennis Crowley, and Coleman Nutt, twelve good and lawful men, who being

duly elected, tried, and sworn well and truly to try the issues joined between the parties herein, and a true verdict render according to the evidence, therefore the trial progressed; and not being fully terminated, is continued until to-morrow morning.

Trial progressed.

And afterwards the following further proceedings were had in this cause, to wit:

253 Tuesday, February 23d, 1858.

THE CITY OF CARONDELET } Trial progressed.
vs.
THE CITY OF ST. LOUIS. }

Now at this day come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and, not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, February 24th, 1858.

THE CITY OF CARONDELET } Trial progressed.
vs.
THE CITY OF ST. LOUIS. }

Now at this day come again said parties, by their respective attorneys and thereupon came also the jury heretofore sworn in this cause, there fore the trial progressed, and, not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Thursday, February 25th, 1858.

THE CITY OF CARONDELET } Trial progressed.
vs.
THE CITY OF ST. LOUIS. }

Now again at this day come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and, not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Friday, February 26th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this
254 cause, therefore the trial progressed, and, not being fully terminated, the same is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, February 27th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and, not being fully terminated, is continued until Monday morning, March 1st, 1858.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Monday, March 1st, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and, not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Tuesday, March 2d, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties, by their respective attorneys,

and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and, not being fully terminated, is continued until to-morrow morning.

255 *Trial progressed and continued.*

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, March 3d, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and, not being fully terminated, is continued until to-morrow morning.

Trial ended.—Verdict for deft.—Verdict filed.

And afterwards the following further proceedings were had in this cause, to wit:

Thursday, March 4th, 1848.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial ended. Judgment.

Now again at this day come said parties, by their respective attorneys, and thereupon come the jury heretofore sworn in this cause; therefore the trial progressed, and, being fully terminated, the jury as aforesaid, on their oaths aforesaid, find for the defendant. It is, therefore, upon the finding of the jury as aforesaid, ordered and adjudged by the court, that the plaintiff take nothing by its suit, but that the defendant go hence without day, and recover of said plaintiff its costs and charges herein expended, and have execution therefor.

Verdict filed in this cause.

Motion for new trial filed, sub. and overruled.—Stip'l'n as to bill of exceptions filed.

And afterwards, the following further proceedings were had in this cause, to wit:

Friday, March 5th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Motion for a new trial filed in this cause, and, the same being submitted to the court, it is ordered and adjudged that said motion be overruled. Stipulation as to bill of exceptions filed in this cause. (For

which motion for new trial and stipulation, as to bill of exceptions, see "bill of exceptions.")

256 *Second stipul't'n as to bill of exceptions filed.*

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, March 6, 1858.

THE CITY OF CARONDELET }
vs.
THE CITY OF ST. LOUIS. }

Second stipulation as to bill of exceptions filed in this cause. (For which 2d stipulation as to bill of exceptions, see "bill of exceptions.")

Bill of exceptions filed.

And afterwards the following further proceedings were had in this cause, to wit:

March term, 1858.—Tuesday, March 16th, 1858.

THE CITY OF CARONDELET }
vs.
THE CITY OF ST. LOUIS. }

Bill of exceptions filed in this cause; which bill of exceptions is in words and figures as follows, to wit:

Bill of exceptions.

CITY OF CARONDELET }
vs. } St. Louis land-court. Bill of exceptions.
CITY OF ST. LOUIS. }

Be it remembered that, on the trial of this cause, the parties gave the following evidence to the jury.

Plaintiff read to the jury the deposition of Antoine Smith, as follows:

Deposition of Antoine Smith.

ANTOINE SMITH, of lawful age, being produced and sworn, on his oath declares and says that he is not able to explain himself in the English language without the medium of an interpreter, the French language being his vernacular tongue, and that he does not understand the English language. Whereupon the undersigned justices administer to him the oath in the French language, and proceed to take his examination in that language, as follows, to wit:

Question. Quel age avez vous et ou demeurez vous?

Reponse. J'ai quatrovingts ans, et je demeure a la ville anciennoment appelee Florissant, maintenant appelee St. Ferdinand, dans le comte de St. Louis.

Question. Ou etes-vous ne?

257 Reponse. Je suis ne'en Canada. Je suis venu a St. Louis a l'age de dix huit ans, ou j'ai reside quatroze ans avant le chagement du gouvernement Espagnol aceliu du gouvernement des Etatis Unis. A cette epoque j'ai pris residence Florissant ou j'ai demeure jusqu a present.

Question. Depuis votre arivee dans ce pays avez vous en connaissance des communeo de Carondelet et de St. Louis? Si votre reponse est affirmation, dites ceque vous en connaissez?

Reponse. J'en ai connaissance. La commune de St. Louis, partait de la demi-lune, allant au sud jusqu'a Chesnut street dans la ville de St. Louis, de la ou partait a l'ouest un peu sur le sud jusqu'a la fountaine de la vielle Fleure ou de la vielle Jannette qui etait la meme fontaine ; cette ligne arrivait jusqu'au trait quarre du champ common de la barriere des Noyers; ensuite elle couvait a l'est a razerle cote nord du champ de Carondelet et elle aboutissoileau Mississippi, au beau millieu du "parie de sucre" et cette derniere ligne etait la ligne de division entre les communes de Carondelet et de St. Louis.

Il y avait une borne en pierre plantee sur le beau millieu du "parie de sucre," pour marquer cette ligne de division entre les deux communes. Si cette borne existe encore, je n'en sais rien mon souvenir de cette ligne s'etend jusqu'a soixante et trois ans passes. Il y avait alors une cloture de separation entre les deux communes, et dans cette cloture une barriere tous pres a l'ouest du, "Parie de sucre," pour admettre le passage des gens de Carondelet et de St. Louis. J'ai buche du bois par intervalles avec Francois la Riviere, le vieux ville maire et son garcon, qui avaient etabli nu chantier pour bucher de bois aussi ou cote nord de cette cloture. J'ai vu cette cloture mainte et mainte fois. Par la negligence des passants, la barriere etait laisso bien souvent ouverte, de sorte que les animaux des gens de St. Louis s'echappaient pour gagner le marameo enfin la cloture pour cette cause ful aliattai jusqu'au champ de Carondelet la balance de la cloture de division a toujours reste jusqu'a cinq ou six ans avant le changement du gouvernement. Les gens de la barriere des Noyers out ensuite maintence cette balance de cloture de division jusqu'a cinq ou six ans apres le changement du gouvernement.

Question. Savez-vous, si la ligne et la cloture de division doue vous avez ci-dessus parle, etait respectee et reconnue par les habitants de Carondelet et de St. Louis comme etant la ligne et la cloture de separation entre les communes de St. Louis et de Carondelet?

Reponse. Oui, je le sais, car tous les habitants de chaque ville, qui avaient des terre d'nu bord ou d'autre et qui avaient des animaux a garder etaient obliges de faires leurs portions de cette cloture, et si ils ne le faissant pas volunterement, le syndic du gouvernement les y
258 obligointe, aussi long temps que la cloture etait de bout, les habitants de St. Louis et de Carondelet, ne pouvaient passer ni d'nu bord ni de l'autre pour le bois ou le paturaze de leurs animaux, nais apres qu'elle fut abattue, je ne sais pas quels arrangements ils out pris mutuellement.

Question. Avez-vous vu et reconna le "Parie de sucre" derniere-ment?

Reponse. Oui, je l'ai va et reconnu aujour d'hui en venant ni a Carondelet. Je connais ce "Parie de sucre" parfaitement bien, et je pouvais, dans ma memoire tracer apen pres lecours de la ligne et cloture de separation entre les deux communes, dont j'ai ci-dessus parlie si ma vue etait aussi conne a present qu'elle etait dans urow jeune temps, je ne crois pas que je pourrait m'y tromper de grand chose.

Question. Comment se servait ou de la part de St. Louis et de Carondelet de ces deux communes?

Reponse. De la part dergens de St. Louis et de Carondelet, respectivement, ils se servaient de leurs communes respectives pour leurs besoins de paturage, de chauffage, de bois de batisse d'entourage et generalement pour tous leurs besoins respectifs.

Question. Quelle etait l'etendue de la commune de Carondelet au sud de la ligne de separation que vous avez ci-desus mentionne?

Reponse. J'ai toujours entendu dire, que la commune de Vide Poche s'etendait-decette ligne jusqu'*a*n Maramec, au sud.

Question. Combien de terre, dans letemps des Espagnols ou le gouvernement Espagnol, entre la ligne du Parie de sucre que vous avez ci-dessus mentionne, la lignie nord de la ville de Carondelet le Mississippi et le champ commune de Carondelet apportenait a la ville de Carondelet comme commune?

Reponse. Toute la terre dans ces limites appartenait a la ville de Carondelet sous le gouvernement Espagnol commune.

Question. Avez-vous aucun interest dans aucune propriete ou bien fond en de dans de la ville de Carondelet, ou de la commune de Carondelet?

Reponse. Je n'en ai jamais en, et je presume jamais n'en avoir.

his
ANTOINE + SMITH.
mark.

STATE OF MISSOURI,
County of St. Louis, ss:

We, the undersigned, Bernard Poepping and Auguste Gamache, justices of the peace within and for the county aforesaid, do hereby certify that the above deponent, Antoine Smith, whose place of residence is in Florissant, in the county and State aforesaid, was by us sworn in the French language to testify the whole truth of his knowledge touching the matters and things set forth in the annexed petition; that the deponent was examined in said language, and his examination reduced to
259 writing; and that the same was distinctly read to the deponent and subscribed by him in our presence, on the ninth day of September, eighteen hundred and fifty-two, between the hours of eight o'clock in the forenoon and eight o'clock of the afternoon of that day, at the city-hall, in the city of Carondelet, in the county and State aforesaid.

Given and certified the ninth day of September, A. D. 1852.

BERNARD POEPPING,
AUGUSTE GAMACHE,
Justices of the Peace.

Translation of Ant. Smith's deposition.

Question. How old are you, and where do you live?

Answer. I am eighty years old, and I live in a town anciently called Florissant, now called St. Ferdinand, in the county of St. Louis.

Question. Where were you born?

Answer. I was born in Canada. I came to St. Louis at the age of eighteen, where I have resided fourteen years before the change of the Spanish government to that of the United States. At that epoch I took up my residence in Florissant where I have resided ever since.

Question. Since your arrival in this country have you had any knowl-

edge of the commons of Carondelet and St. Louis? If your answer be in the affirmative, state that which you know about them.

Answer. I am acquainted with them. The common of St. Louis started from the Half-moon, running southwardly to Chesnut street in the city of St. Louis; thence it went westwardly a little to the south, to the fountain of the old woman Flora, or of old Janette, which is the same spring. This line reached the rectangle entres carre of the common field or barriere des Noyers; thence it ran eastwardly grazing the north line of the common field of Carondelet, and terminated at the Mississippi, in the centre of the "Sugar Loaf," and this last line was the division line between the commons of Carondelet and St. Louis. There was a corner-stone planted on the centre of the "Sugar Loaf" to mark the dividing line between the two commons. I do not know whether this corner-stone is still in existence. My recollection of this line goes back sixty-three years. There was then a dividing fence between the two commons, and a gate near to, and west of the "Sugar Loaf," for the passage of people from Carondelet and St. Louis. I have at intervals cut wood with Francois Lariviere, the old ville maire, and his boy who had established a shanty to cut wood also on the north side of this fence. I have seen this fence over and over again.

Through the negligence of the passengers the gate was often left open, so that the cattle of the St. Louis people escaped in order to reach
260 the Maramec, at least the fence was on this acount thrown down to the common field of Carondelet. The balance of the dividing fence has always remained, until five or six years before the change of government. The people of barriere des Noyers have there retained the remainder of the dividing fence until five or six years after the change of government.

Question. Do you know whether the line and dividing fence, of which you have spoken, was respected and recognised as the line and fence of separation between the commons of St. Louis and Carondelet?

Answer. Yes, I know it, for all the inhabitants of each town who owned lands on one side or the other, and who had cattle to watch, were obliged to make their portion of that fence, and if they did not do so voluntarily the syndic of the government would force them to do so. As long as the fence was standing the inhabitants of St. Louis and Carondelet could not pass from one side to the other for wood or pasturage for their cattle, but do not know what arrangements they made between each other after the fence was thrown down.

Question. Have you seen and recognised the "Sugar Loaf" to-day?

Answer. Yes, I have seen and recognised it to-day, in coming to Carondelet. I know this "Sugar Loaf" perfectly well, and I can in my memory trace near about the course of the line and fence of separation between the two commons of which I have spoken. If my sight were as good now as it was in my younger days, I do not believe I could be much mistaken.

Question. How were the two commons used on the part of St. Louis and Carondelet?

Answer. On the part of the people of St. Louis and Carondelet, respectively, the commons were used for pasturage, feed, building, wood, for enclosures, and for all their wants in general.

Question. How far did the common of Carondelet extend south of the line of separation which you have above mentioned?

Answer. I have always heard that the common of Vide Poche extended from said line to the Meramec in the south.

Question. How much land, at the time of the Spaniards or the Spanish government, between the above mentioned "Sugar Loaf" line, the line north of the town of Carondelet, the Mississippi and the common field of Carondelet, belonged to the town of Carondelet as commons?

Answer. All the land within those limits belonged to the town of Carondelet under the Spanish government, as commons.

Question. Have you any interest in any property within the town of Carondelet or in the common of Carondelet?

261 Answer. I have never had any, and do not expect ever to require any.

ANTOINE his + mark. SMITH.

Bill of exceptions.—Deposition of Paul Robert.

Also the deposition of Paul Robert, as follows:

PAUL ROBERT, being produced, sworn, and examined, on his oath, deposeth and saith:

Question. How old are you?

Answer. I am sixty-two years of age.

Question. Where were you born?

Answer. I was born in the village (now city) of Carondelet.

Question. Where has been your place of residence?

Answer. My principal place of residence has been in the village (now city) of Carondelet, where I now reside.

Question. Had the town or village of Carondelet any common during the existence of the Spanish government?

Answer. Yes.

Question. Where was the northern boundary line of the Carondelet common during the existence of the Spanish government?

Answer. The northern boundary line began at the Mississippi River, at a point well known by the name of the "Sugar Loaf;" thence westwardly to or near the northeast corner of the common fields of Carondelet.

Question. How far south from the Sugar Loaf line did the common extend?

Answer. It extended a great deal farther south than the village of Carondelet.

Question. How much of the territory lying between the "Sugar Loaf" line and the village of Carondelet, and between the Mississippi River and the common fields of Carondelet, was common in the time of the Spanish government?

Answer. It was all common of Carondelet during the Spanish government.

Question. What use did the inhabitants of Carondelet make of the common alluded to during the Spanish government?

Answer. To graze their horses and cattle, to make use of the wood for building purposes, to obtain rails for fences, and for such other uses and purposes as commons are generally used.

PAUL his + mark. ROBERT.

STATE OF MISSOURI,
County of St. Louis, ss:

We, the undersigned, Bernard Poepping and Auguste Gamache,

262 justices of the peace, within and for the county aforesaid, do hereby certify that Paul Robert, the deponent, whose place of residence is in the city of Carondelet, in the county and State aforesaid, was by us sworn to testify the whole truth, of his knowledge, touching the matters and things set forth in the annexed petition; that deponent was examined, and his examination reduced to writing, was distinctly read to the deponent and subscribed by him in our presence, on the seventh day of September, eighteen hundred and fifty-two, between the hours of eight o'clock in the forenoon and eight o'clock of the afternoon of that day, at the city hall, in the city of Carondelet, in the county and State aforesaid.

Given and certified the seventh day of September, A. D. 1852.

BERNARD POEPPING,
AUGUSTE GAMACHE,
Justices of the Peace.

Bill of exceptions.—Aug. Gamache's test'ny.

AUGUSTE GAMACHE, a witness for plaintiff, testified:

I was 60 years old on 27th May, 1857. I know where the line of division between the commons of St. Louis and Carondelet is; it was at the Sugar Loaf, as we call it. The Sugar Loaf is close by the river, on the rock. I can't tell the distance. I remember the common fields of Carondelet. I remember of being where I was told, that is, the barrieres des Noyers. I remember St. Arnaud Micheau; he was not anciently a citizen of Carondelet, but he had been there a long time. I remember that Micheau had a shot-tower; that factory was in the neighborhood of Carondelet. I have been told that Mr. McPherson—I do not know him—claimed a piece of land there. Mr. McPherson was to the north and Mr. Micheau to the south of the road. Micheau was on the right hand side of the road coming this way; Mr. McPherson was on the left hand side, going. I can't say how long ago it was that Micheau built his shot-factory. It was 34 or 35 years ago, more or less, that Micheau went there; he went there by permission of Carondelet. He staid there I don't know how long. According to the best of my opinion, he remained there until he died. I remember the sale of St. Louis commons in 1836; I can't tell whether Micheau was dead then or not. Micheau had his house and other little buildings in possession. I can't tell how much ground he had enclosed. I can't tell how far Micheau was south of the Sugar Loaf; about ten arpents, more or less. Micheau had a fence; I don't know how much land was found. I know it from them who signed a paper among themselves, giving Micheau permission to settle there, that there was a paper. I know that Micheau claimed permission from Carondelet, because he asked permission, and they run a subscription list, and they signed it, and I know they gave him permission in that.

263 Cross-examination.

On cross-examination, witness testified:

I have seen the shot-tower; it was a wooden frame; it must have been 50 or 60 feet high above the surface of the bluff. I suppose the tower must have been 20 feet square. Micheau built a stone house. We had 2 or 3 acres enclosed; at any rate 2 acres. I never knew of any fence from Sugar Loaf to Carondelet. I knew a fence in front of common fields of 50 years past. I suppose the cattle would go from

Carondelet north, but the people of Carondelet would, some of them, go north of that line, but it was forbidden, for that line belonged on the north to St. Louis. I don't remember whether any of the people of Carondelet cut wood north of the line at Sugar Loaf. I was a farmer. I cut wood and pastured cattle north of the village of Carondelet. The commons of Carondelet extended south; I can't say how far. The commons extended below the river Desperes; they did not go to the Maramec; they went to the river Amatisse. There was good pasture and wood down to the Amatisse. I have always been an inhabitant of Carondelet.

Bill of exceptions.—Deposition of Pierre Chouteau, jr.

Plaintiff then read the deposition of Pierre Chouteau, jr., of 17th June, 1856, as follows:

In the St. Louis land-court of St. Louis County.

CITY OF CARONDELET, PLFF.,
vs.
CITY OF ST. LOUIS, DEFT.

To the defendants:

Take notice that depositions of witnesses in the above-entitled cause, to be read in evidence on the part of the plaintiff, will be taken at the office of Hill, Grover & Hill, attys. at law, in the city of St. Louis, in the county of St. Louis, and State of Missouri, on the 17th day of June, 1856, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of the same will be continued from day to day, at the same place and between the same hours, until completed.

B. A. & D. W. HILL,
Attys. for Plff.

Served June 18th, 1856, in person.

J. KAHN.

(Upon the back of the foregoing notice are the words and figures following, to wit:—Clerk.)

STATE of MISSOURI,
County of St. Louis, ss:

Joseph Kahn, being duly sworn, says that he served the within
264 notice upon the city of St. Louis, defendant, by delivering a true copy thereof to John How, mayor of said city, on the 13th day of June, at the said city, in said county.

J. KAHN.

Sworn to and subscribed before me this 17th June, 1856.
[SEAL.] CHARLES H. TILLSON,
Notary Public.

Deposition of witnesses produced, sworn, and examined at the office of Grover and Hill, attys. at law, in the city of St. Louis, in the county of St. Louis and State of Missouri, before me, Charles H. Tillson, a notary public within and for said county, in a certain cause now pending in the St. Louis land court, State of Missouri, between the city of Carondelet, plaintiff, and the city of St. Louis, defendant, on the part of the plaintiff.

PIERRE CHOUTEAU, jr., of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposes and says:

I was sixty-seven years old last January. I was born and raised in the town and city of St. Louis. My father was a resident of the old town of St. Louis from its establishment in 1764. I recollect the town of Carondelet when I was a small boy. I recollect the common fields of Carondelet. Carondelet had commons on the north of the town. There was a fence starting from the Sugar Loaf which run to the northeast corner of the common fields of Carondelet. There was a gate in that fence on the road from St. Louis to Carondelet. The road was near (not very near) the Sugar Loaf. The land south of that fence to the village was used as a common by the Carondelet people, and the land north of the fence was used as a common by the people of St. Louis. The fence was, as I understood, the dividing-line between the commons of St. Louis and Carondelet.

Cross-examination.

Cross-examination.

I suppose it was between 1798 and 1800 that I saw this fence. It was before the change of government. The Sugar Loaf is a little mound near the river. I cannot say how large it is. I never went to the mound before 1803. I only saw it from the road. The fence struck the Sugar Loaf, as near as I could see from the road, near the middle of it. It was a straight fence, with pickets and rails. I have never been at the northeast corner of the common fields of Carondelet. I don't know who owned the north common-field lot of the Carondelet commons. I don't know long the fence remained. I understood from all the people that the fence was the dividing-line. There were frequent difficulties between the people of St. Louis and Carondelet about repairing
265 this fence. Each town was bound to keep up its part of the fence. I don't know which part St. Louis was to keep up or Carondelet to keep up.

P. CHOUTEAU, JR.

I, Charles H. Tillson, a notary public within and for the county of St. Louis and State of Missouri, do hereby certify that, in pursuance of the annexed notice, Pierre Chouteau, jr., the deponent, whose place of residence is St. Louis, Missouri, came before me at the office of Hill, Grover & Hill, attys. at law, in the city of St. Louis, county and State aforesaid, who was there by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, and subscribed by said deponent in my presence, on the 17th day of June, A. D. 1856, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon of said day, at said place; and his said deposition is now herewith returned.

Given and certified in the county of St. Louis, State of Missouri, this 17th day of June, A. D. 1856, as witness my hand and official seal.

[SEAL.] CHARLES H. TILLSON,

Notary Public, St. Louis County, Missouri.

Bill of exceptions.—Hyacinth Pigeon's testimony.

HYACINTH PIGEON, being duly sworn, testified:

I am now 78 years old. I have always lived in Vide Poche, (Carondelet.) After 1806, I resided always at Carondelet. I resided two years in St. Louis before 1806. I came to St. Louis in 1804. I was seven years at Detroit before coming here. I was born at Canada. The line of division between Carondelet and St. Louis was shown to me. I saw the fence—where there had been a fence. I know where the Sugar Loaf was. I know the Carondelet common fields. I know the northeast corner of the common fields. I think the fence began on the Mississippi, running over the hill of the Sugar Loaf to the place where the stone was. I never traced the line; it seems to me that the fence run toward the north corner of the common fields. I have known these commons ever since 1806. I saw that fence the year after I came here. It was shown to me. I was 27 years of age when I first saw the fence. I can't tell how long they used the commons. They told me there was a fence and a gate between the commons of St. Louis and Carondelet; they showed me the gate 50 times. I know St. Arnaud Micheau. I went to bring him there when he built the factory. St. Arnaud Micheau, after he built the factory, lived in his stone house and then in his little frame south of it. The factory was somewhat below the Sugar Loaf, in the common of Carondelet. I can't remember the year; it was 25 or 30 years ago; can't tell exactly. Micheau went on the commons of Ca-
266 rondelet by the permission of a petition run through the town for permission to Micheau to go there. I can't tell how long a piece of ground he had. I can't tell how long Micheau staid there; he must have remained there 15 or 20 years. I know the fountain called the Cave Spring; it is below the new factory. The spring of the Grand Coulé and the Cave Spring are different springs. There is such a spring as the Cavern Spring, but I never went to it. I have passed it 100 times. Between the landing of Carondelet and St. Louis there are 3 springs, one at the factory of James Evans, one at the Grand Coulé, and one at another place above. I know of but one spring between Carondelet and the Sugar Loaf, which is at the cave or cavern. The factory of Jim Evans is a little higher up than this spring. I knew of a man by the name of L. M. Eiler. I was a chain-carrier with him. I do not remember when Eiler surveyed the village of Carondelet. I know he surveyed.

Cross-examination:

On cross-examination, witness testified:

I think the Cavern Spring is ¾ths of a mile below Micheau's factory. It is counted one mile from the factory to Carondelet. I brought Micheau to Carondelet from a little down on this side of Herculaneum. The fence was not up when I came to St. Louis. It had been burnt. I don't know how long it been burnt before I came here. I did not inquire of the fence, nor where it had been destroyed. I saw the rails and the logs of the fence along the line, but I did not inquire when it had been destroyed. The ground between the Sugar Loaf and the common fields of Carondelet were covered with the timber—fine timber. It was not thickly timbered; it was fairly timbered; it was handsome, fine timber. There were hazel bushes there and young cheneaux; there were not a great many hazel bushes there. You could go through there without any trouble. I was a laborer—cut wood and worked for the farmers. I boated in the barges till the steamboats came. When I found a trip I made it; and then I worked among the farmers; and

when there was no work I amused myself. They showed me the stone where the fence ended. The stone was a little more on the other side than on this. At the Sugar Loaf there is a bluff bank. The rock was stuck into the ground in the Sugar Loaf, at the base of it. I was not more than a year here when they told me where the line was. From 1806 I have always lived in Carondelet. I have owned property there. I have none now. The little I had I divided it between my children. I got the lot in 1818, and afterward the corporation made me pay for it. I never came to the court-house before to give testimony. I testified when Mr. Primin came to my house, 2 or 3 or 4 years ago. I know that Mr. Primin came to my house 4 years ago. It was not a process that I know of. Mr. Primin did not tell me whether there was any lawsuit or not. I think I signed the paper for Micheau to build a factory.

267 Plaintiff read to the jury the survey by the United States of the common-field of Carondelet of 1834, made by Brown, as follows:

(For field-notes of this survey and plat, see page 225 of this transcript.—*Clerk.*)

Bill of exceptions.—Henry Morin's testimony.

HENRY MORIN, being duly sworn, testified:

I am 66 years old last August. I have lived in St. Louis since my birth. The division-line of the commons between St. Louis and Carondelet, as I have always been told, was at the Sugar Loaf. This side belonged to St. Louis; the other side to Carondelet. I can't say whether the people of St. Louis had a right to use the commons of Carondelet below the Sugar Loaf. The people of Carondelet cut wood between the Sugar Loaf and the village of Carondelet. I can remember the inhabitants of Carondelet cutting wood there for 50 years, more or less. I have seen the stone at then Sugar Loaf; it was a large stone. The stone was about the middle of the road, a little more on one side than the other. The road passed on both sides of the Sugar Loaf.

On cross-examination, witness testified:

I went to school till 17 years of age, and then went a-voyaging, and have continued ever since.

I have been 5 years in the mountains without coming here—sometimes 2 years, sometimes 1 year. For 37 years I have been voyaging for the American Fur Company. I always saw that stone, when a boy, going to Carondelet and back. We always said, there is the dividing-stone. It must have been 55 or 56 years ago when I first understood that was the boundary-stone.

Question. Did not the people generally go and cut wood anywhere?

Answer. I have not seen hay cut; I have seen wood cut. I have seen the people of St. Louis cut wood in the common of St. Louis, and the people of Carondelet in the commons of Carondelet. I have cut wood in the commons of St. Louis at 17 or 18 years old. There was some timber between St. Louis and Carondelet, and some bushes and cheneaux. In some places the cheneaux were very thick, and in some places it was open ground. I saw a fence of cheneaux or poles from the Sugar Loaf and westwardly a little north. When I saw it, it was mashed down. I was 17 or 18 or 20 years old when I saw the fence there; it was washed down; it was in patches where the fire had burned through. I never followed the fence. It looked as if it had been mashed down a long time; the poles were rotten. The cattle could

pass up and down it easily. The first time I went to Carondelet I was 10 or 15 years old. I went down to see my brother-in-law, Mr. Bissonett.

I did not notice the fence at first, but I was 20 years old when
268 I first took cognizance of it. There was nothing to prevent the cattle from passing when I first saw the place. I never testified before in this case. I came to the court-house 2 years ago, when I was first spoken to about this matter. I can't tell how many men, women, and children there were in St. Louis in ancient times. There might have been about 2 or 300 families in St. Louis. I don't know the value of the land in the country.

Cross-examination:

On re-examination, witness testified:

I saw the Sugar Loaf stone when I was quite young. I did not know then that it was the boundary. I must have been 15 years old when they told me that is the boundary.

The rock was in the low place in the road. The Sugar Loaf was on the border of the Missouri, and from there where this stone was it was 2 or 300 yards.

I mean by the Missouri, the river Mississippi.

On cross-examination, witness testified:

Mr. Tayél, Mr. Barada, and Desnoyer told me this is the stone of the dividing-line.

They told me about 17 or 18, 16 years—I might have been 20 years old. I was down at Carondelet a-frolic'ing and eating pancakes, and at a ball, and they told me the commons went up to the Grand Coulé at the Sugar Loaf, and that was their boundary.

Chas. E. Saloman's testimony.

CHARLES E. SALOMON, being duly sworn, testified:

I am county surveyor. I have been a surveyor for 15 years. I have surveyed lands lying between the common fields of Carondelet and the Mississippi River, south of the Sugar Loaf mound. This plat of survey which I have in my hand is a survey made by myself. The north ½ of block 93 is south of the line run from the Sugar Loaf to the northeast corner of common fields of Carondelet; northeast ¼ is 10 acres; northwest ¼ is 10 acres. It is about 18 acres. Bounded north by block 88, east by east ½ block 93, south by Brown's line of the Carondelet commons, and west by block 92, east ½ of block 89; 20 acres in this part. Bounded north by block 83, east by block 88, south by block 92, and west by west ½ of block 89. Southwest ¼ of block 88, south of the Sugar Loaf line, contains 10 acres. Bounded north by northwest ¼ of block 88, east by southeast ¼ block 88, south by block 93, west by block 89. Southwest ¼ of block 83 is partly south of the Sugar Loaf line; about 9 acres of it is south, bounded north by the line to Sugar Loaf, east by block 84, south by block 89, west by west ½ of block 83.

Lots 1 and 2 in subdivision No 1.

Lot 1 is south of Sugar (Loaf) line; $207\frac{6}{12}$ feet long by $27\frac{6}{12}$ feet deep.

269 Of lot 2 the western half is south of Sugar Loaf line, 25 feet front by 210 feet deep.

Lots from 1 to 24 in subdivision 2 of lot 4.

They are south of this line. Lots from 1 to 15 are 130 feet by 25 ft.

The corner lots are 33 feet 9 inches front.

Lots from 16 to 24 are 25 feet front by 125 feet to 183 feet deep.

Subdivision one and two of lot 4 are bounded north by block 85, east by Iron Mountain R. R., south by lot 3, and west by block 88.

I made this survey by the order of the city of St. Louis, in May. 1854.

I did all this work on the ground.

At the time I made this survey these blocks and lots were vacant—not occupied by anybody.

The map south of Sugar Loaf is as follows:

(See original, page 22.)

Cross-examination:

On cross-examination, witness testified:

I know a survey of the St. Louis commons made by Deward. The south line of my survey corresponds with the south line of my survey of the commons.

This survey agrees with the south line of Jos. C. Brown's survey of the St. Louis commons. I saw improvements on different parts of this property. Home of the friendless, and others, are on this property. Those improvements were there since 1850. Some of them are costly improvements. The grounds are, some of them, in high cultivation.

On re-examination, witness testified:

The order of survey to me was made in Feb'y, 1854. They sold some other lots there in 1865. They sold south of the line in 1854. They sold, in 1854, lots in subdivision No. 1. They sold lots south and north of the line of the Sugar Loaf line.

Amable Chartrand's testimony.

AMABLE CHARTRAND:

I am 67 years old. I was born in Carondelet. I have always lived there, but have voyaged sometimes. The village of Carondelet had commons in Spanish times. The commons extended on the north to the Sugar Loaf, which we recognized. The commons run west from the Sugar Loaf to the north corner of the common fields.

There was always an enclosure of the common fields of Carondelet. The fence of the common fields has always been there during my remembrance. The people of Carondelet used these lands for commons,
270 as far as I can recollect, for wood and pasturage of cattle. Each one who had a piece of land in the common fields made his own fence. There were boundaries of the lots in the common fields of Carondelet.

The people of Carondelet always used this land as commons, as far as I can recollect. I remember St. Arnaud Micheau. He had a shot-factory below the Sugar Loaf. It was within the commons of Carondelet. It was about ½ mile below the Sugar Loaf, more or less. I saw Micheau there 27 years ago, more or less. He went there to build a factory, by permission of the people of Carondelet. They gave him permission to build a factory there. He lived there I can't say how long. The people of Carondelet used that land as commons during all my knowledge. They used it as commons for wood and pasturage. They used it as such when Micheau went there to build his factory.

On cross examination witness testified:

Never knew of any fence between the commons. The cattle grazed

everywhere between St. Louis and Carondelet. I did not know of the people of Carondelet cutting wood up to St. Louis. The people of Carondelet worked the road up to the Grand Coulé. They always worked the road as far as the Grand Coulé, ¾ of a mile, more or less, above the Sugar Loaf. The people of St. Louis took care of the road from the Grand Coulé up to St. Louis.

The people of Carondelet did not cut wood up as far as the Grand Coulé, to my knowledge. The cattle grazed up there all along the road; some of them would go further, and some of them would go shorter. Cattle and horses of St. Louis and Carondelet went back on the prairies and grazed also.

I have cut wood in the commons of Carondelet. Carpenter, plougher, and mower was my occupation. Pourcelli and Euge lived in the common fields of Carondelet. I knew them there a good while, say 37 or 38 years, more or less. I don't whether Pourcelli or Euge lived there first. Pourcelli lived west of the commons. Pourcelli was to the south of the line of the commons of Carondelet on the north.

Question. Did the line of commons north strike the fence of Pourcelli?

Answer. It went to the land of Jos. Pierre Pourcelli, to the best of my opinion.

Question. On which side of Pourcelli did Euge lie, north or south?

Answer. He was north of John P. Pourcelli, to the best of my opinion.

According to the best of my opinion, the line terminated somewhere in the street, then near Pourcelli's house. I don't know much about the places up there. I lived in the lower part of Carondelet. I can't hear well, and I speak to the best of my opinion. The occupant north
271 of Euge was Dominique Euge; don't remember the one north of the first Euge. One of Pourcelli's children was next south, and then Valle. I did not go often in that neighborhood. Pourcelli and the Euges lived in the common fields of Carondelet.

Fred. Dent's testimony.

FREDERICK DENT, being duly sworn, testified:

I came here in 1811. I know Don Antonio Soulard, surveyor of Upper Louisiana. I knew the commons of Carondelet, between the Sugar Loaf. I know the commons south of the river Des Peres. Don Antonion Soulard is dead; has been several years. I recollect of hearing his evidence in a justice's court. I had sent a man named Mallet for cutting wood south of the rives Des Peres. Don Antonio Soulard, and Mr. P'r Choteau, and Auguste Choteau, testified in 1824 or '5, or thereabouts. He testified that he was sent by the lieutenant-governor to run a common for the people of Carondelet, and surveyed, commenced at the Sugar Loaf, and run west to the corner of the common-field lots of Carondelet. He then went to the southwest corner of the common fields, and started there, and run to the river Des Peres. He said he was ordered to survey 6,000 arpens. I was very particular in asking this, because they claimed commons on the other side of the river Des Peres. He asked the people if they wanted any more commons; they said no, that they had more commons than money to pay him for surveying. The whole town, (male part of it,) he said, were present at the survey.

On cross-examination, witness testified:

He did not say what year he did this. It was under the Spanish

government. He was then about 60 years old. I did not ask him when he did this. Mr. Soulard was a Frenchman. He told me he came from France. He came here about the time of the French revolution. I first settled in St. Louis. I got my land in Carondelet about 1820. Have continued a proprietor down there ever since. I was then at Carondelet during every week, in fall and spring, while I lived in St. Louis. There was a well-beaten road between Carondelet and St. Louis. There were no improvements between the arsenal and Carondelet. The country was covered with trees. When I came here, and since, I saw the people of Carondelet cut wood. I have seen them cutting at the Grand Coulé. It is above the Sugar Loaf ¼ of a mile. I have seen the people of St. Louis cutting down below the Sugar Loaf. It was not used as a common between them. They pastured cattle there. There was no fence. I have heard there had been a fence there. I have seen them both cut wood. This was a matter of no moment then. This land was worth $1.25 an acre. I don't know that they ever went out of the commons to cut wood. I have had suits with Carondelet. She sued me 15 years ago in the State courts in
272 this county. They sued me for a piece of land below the river Des Peres. They introduced the survey of Brown. Auguste and Peter Chouteau, sen'r, were present when Soulard testified as above stated. They testified also with regard to the extent of the commons. Auguste and Peter Chouteau thought the commons extended south of the river Des Peres, but could not say how far. They said that a right had been given to Dunn to build a mill on the banks of the river Des Peres south. They did not say how far the commons went below the river Des Peres, but spoke of its being 6,000 arpens altogether. They, both of them, said the boundary between the commons of St. Louis and Carondelet was the Sugar Loaf. I know the location of the mill. It was on the bank south, near the bridge, across the Des Peres, about ¾ or 1 mile from the mouth.

On re-examination, witness testified:

I know where Wm. Warren's place was. It was below the Sugar Loaf ¼th of a mile on the Carondelet road, within the commons of Carondelet, as laid down by Soulard. He built a house. He built there shortly after the sale of the lots by St. Louis. He had 10 or 20 acres. I don't recollect. He was a carriage maker or repairer. I don't know he ever manufactured any.

(Possession of the city admitted as to all lots not sold.)

Bill of exceptions.—Part'n of dep's of Dr. Nick's Demenil's, in relation to rents and profits of the ground.

So much of Dr. Nicholas Demenil's deposition read as relates to the rents and profits of the ground for a thirty-years lease from this date.

What will the lease be worth per acre per year?

(Objected to as above by the deft's counsel.)

Answer. I think it worth about $20 per acre per year.

Question by same. From the first of January, 1853, what would this ground lease for, upon a thirty-year lease?

(Objected to by same as irrelevant and incompetent.)

Answer. The land would have leased for less in 1853 than now, because the ground was less valuable then; it would lease for about ten dollars per acre per year from that time.

Plaintiff here closed in chief.

Bill of exceptions.

Defendant, in defence, gave the following evidence to the jury:

1st. Defendant offers the claim of the inhabitants of Carondelet, of 17th June, 1808, for 6,000 arpens, to which the plaintiff objects, as not appearing to have been authorized by the inhabitants of Carondelet, and as not authorized by any law of the United States.

The court overrules the said objection of plaintiff, and admits said claim to the jury, as follows:

273 *Claim fo inhab'ts of Carondelet, for* 6,000 *arpens, (which includes the proceed'gs of old board,* 1808 *and* 1812.)

To the recorder of land claims for the Territory of Louisiana.

Take notice that we, the inhabitants and settlers of the village Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land, situate adjoining said village, by virtue of a concession from Zenon Trudeau, lieut'nt governor of Upper Louisiana, dated the 7th December, 1796.

St. Louis, 7th June, 1808.

On the part of said inhabitants.

BT. LAJOYE, *Fils.*

Sa

LOUIS + MENARD, *Pere.*

marque.

A Monsieur Don Zenon Trudeau, Capitaine au regiment fixe de la Louisianne, lieutenant-governeur and commandant en chef de la partie occidentale des Illinois.

L'etat deplorable sans le quel se trouver aujour d'hui & pour la suite le village Carondelet par l'exportation du bois, à l'honneur de vous exposer quaprés la raquette qu'ls a en l'honneur de vous presenter le 5 8bre Jernier. Pour obtenir la continuation de leur terre, vous leur avés dit ne pouvoir pas accorder a sa demmande, que cependent vous alliez faire vos efforts pour leur donner quirrente arpens au dessus de leur pare.

Le village vous prie bien de vouloir faire attention qu' jourd'hui il a un grand encouragement par ce moulin and que son intention est d'ensemencer le plus qu'il pourra. Cest pour quoi il charge le Sr. Gamache de vous presenter celle-ci esperant que vous voudrez. Monsieur, avoir egard a sa demmande, & a sa misere dans la quelle il va être plougé qu'il vous plaise lui accorder la continuation des terres prenant pour borne celle du Sr. Coustans au Mississippi et la reviere Des Peres pour borne venant au même village Carondelet il espere tout de votre bonté, & il croit que vous voudrés bien accorder a sa demmande il ne cessera de rendre grace á vos bontés au village Carondelet le 6 Xbre, 1796.

Sa

JN. BTE. + GAMACHE.

marque.

La terre qui est demandé est, compris dans se qui a été reservé pour fournir le bois necessaire au village a Carondelet et a demande que fait le Sr. Gamache ne pent avoir bien ainsi que toutes concessions accordées dans la direction de la ligne prise au bout des terres du dit village et courant paralettement au Mississippi cent-cinq'te arpens plus bas.

ZENON TRUDEAU.

ST. LOUIS, *le 7 Decembre,* 1796.

274 HAUTE LOUSIANE, VILLAGE DE CARONDELET,
District de St. Louis des Illinois.

L. B., No. 139, fo. 27.

Nous soussignées arpenteur, commissioné par le gouvernement certifious a tous ceux a qu'il apartiendra qu' aujourd'hui 21 Xbre, en vertu de l'ordre que Mr. le l'nt g'eur passée a Mr. de Treget, cap'ne comm'dt du dit village pour enjoindre aux habitans d'avoir a faire connaitre la ligne d'une terre qui leur a été concédé en datte du 7 Xbre, 1796. Laquette signe doit être parallelle a cettes de Mrs. ante Reilhe, et Alvares; les dits habitants en presance de leur com'dt sont convenues de faire tirer leur ligne a praudre de la derniére borne passée a l'extremitée de la profundeur de leurs terres; les quelles avaient été pressédament arpentée par par Mr. P're Chouteau, au vertu d'un ordre de Mr. le l'nt g'eur ayant relevé l'air de vent deces mêmes terres j'ai trouvé qu'elles convaient S. 28° O. Fai suivé cette même ligne 23 arp. 3 p'co ½ half distance a la quelle j'ai rancontré la rivière Des Peres, l'extremite de la ligne sur le bord de la ditte riviere a été bornée avec nue pierre ayant pour temoini deux pierres a fusil, et nue balle de Plomb a plattie la terre du Sr. Alvares devant être distante de la ditte borne de 24 p'ds en suivan parallellement la même ligne, et pour que les dits habitants puissent constater, j'ai delirré le present.

St. Louis, des Illinois, le 25th X'bre, 1797.

ANTONIO SOULARD.

Te artifie partout ou besoin sera que Messieurs les habitants du village de Carondelet, ni out requi de leur mesurer ou faire mesurer par nu de mes deputes une partie de terre qui leur fut accordee pour commun par le l'nt g'eur Dn. Zenon Trudeau, cette terre dut être arpentée par Monsr. Bartelmi cousin qui ce vandit au village de Carondelet a cet effet, au moment. J'operer sa bussole ce trouve or (hors). J'état de lui servir inconvenient qui a empaiché le dit arpentage d'avoir bien, le peude temp qu'il y avoit á le revoir m'a empêché de pouvoir satis faire aux instances qui m'out été faites par les citoyens de l'etablissement de Carondelet. Nu foi de quoi j'ai delivré le present aux interessés pour leur servir et valoir partout ou besoin.

St. Louis, Fevrier, 1806.

ANTONIO SOULARD,
Surveyor Gen'l. T'y Loui'a.

"*Proceed's of old board*, 1808 *and* 1812."

WEDNESDAY, *June 15th*, 1808.

Board met pursuant to adjournment.

Present, the hou'l John B. C. Lucas and Clement B. Penrose.

The inhabitants of Vide Poche, claiming 6,000 arpens of land as a common.

275 On application of said inhabitants, the board order a survey of the land, from the outer end of their field-lots, below the village, to the Mississippi, a single line, for the purpose of ascertaining the length of said line in French arpens, survey to be returned this day 4 weeks.

Board adjourned till Monday next, nine o'clock a. m.

See minutes, book No. 3, p's 206 and 207.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.

MONDAY MORNING, *July 11th*, 1808.

Board met pursuant to adjournment. Present, the Hon'l John B. C. Lucas, Clement B. Penrose.

The inhabitants of the village of Vide Poche, claiming 6,000 arpens of land adjoining said village, on the lower side, as a common, district of St. Louis, produces to the board a notice of said claim to the recorder, dated 7th June, 1808; a petition from Jean Baptiste Gamache to Don Zenon Trudeau, lieutenant-governor, praying for a grant of land below said village, dated 6th December, 1796, and the decree of the said lieutenant-governor thereon, stateing that the land demanded is within the limits of land reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet, and that the demand which is made by Gamache cannot take place, nor no other concession be granted in the direction of a line taken from the end of the field-lots of the village, and running parallel with the Mississippi further down said river one hundred and fifty arpens. Dated St. Louis, December 7th, 1796.

Testimony perpetuated on the rough minutes, June 15th and 24th, 1808.

AUGUST CHOUTEAU, sen'r, sworn, says that he knows the inhabitants of Vide Poche since the year 1770 have made use of the land lying below the field-lots and village of Vide Poche, along the Mississippi, as their commons, and ever since that time have taken therefrom their fencing and fuel; but does not know the extent of the claim; that 25 years ago a man by the name of André built, from the wood of said commons, and on the same, a boat; that he commenced the building of another; complaint was then made by the inhabitants of said village to the lieutenant-governor, who ordered the said André to desist from his work, as the land belonged to said inhabitants; that about 25 years ago there was about 30 families of farming people who had no other pursuits; that since that time, until 1803, there continued to be about the same number of families; that the land which each of said inhabitants possess individually would not be sufficient to furnish them with fuel, and that without said commons they will be obliged to desert said village; that the lands held individually was purposely chosen for cultivation and without firewood.

276 *Testimony perpetuated on rough minutes, June 24th*, 1808.

JEAN BAPTIST PROVENCHÉ, sworn, says that the village of Carondelet has been, to his knowledge, established at least forty years ago; that the village contained, 25 years ago, about 40 families, all farmers. Since about 35 or 36 years ago the said families have been using wood from the land now claimed, and ever since made use of the same as a common. In the year 1803 there was about 40 families; that on the land claimed individually by said families there is no fuel, and that they have no other place to get fuel or fencing from but said commons.

Rough minutes, June 15, 1858.

The board order a survey of the land from the outer end of their field-lots, below the village, to the Mississippi, a single line, for the purpose of ascertaining the length of said line in French arpens; survey to be returned this day four weeks.

The survey ordered by the board in the claim of the inhabitants

of Vide Poche is this day returned, and said claim laid over for decision.

The words one hundred and fifty arpens interlined before signed.

The board adjourned till Wednesday next, nine o'clock, a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.

See minutes, book No. 3, p's 216, 217, and 218.

THURSDAY, *January 2d*, 1812.

Board met. Present, J. B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Inhabitants of the village of Vidè Poche, or Carondelet, claiming 6,000 arpens of land as a common.

See book No. 3, pages 206 and 217.

It is the opinion of a majority of the board that this claim ought not to be granted, Clement B. Penrose, commissioner, voting for a confirmation thereof, under the usages and customs of the Spanish government.

Board adjourned till Monday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book N. 5, p's 551, 552, and 553.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
27th August, 1840.

I certify the foregoing to be truly copied from the original documents on file, excepting the proceedings of the board of commissioners, which are truly transcribed from the minutes, all on file and of record in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

277 *Bill of exceptions.*

To the admission of the same the plaintiff then and there objected and excepted.

Defendant offered the petition of Gamache of the 6th of December, 1796, and the reply of the lieutenant-governor of 7th of December, 1796, and the certificate of A. Soulard of 25th of December, 1797, and the other certificate of 1806, as also the proceedings before the old board of 1808 and 1812, and the evidence and survey of 1808, by Bent, to the admission of each of which as evidence in this cause the plaintiff then and there objected for the same reasons as last above mentioned: but the court overruled said objections and admitted said papers and each of them in evidence, as follows:

Pet'n of Gamache, 7th Dec'r, 1796.

To Mr. Don Zenon Trudeau, captain of the appointed regiment of Lou isiana, lieutenant-governor and commandant-in-chief of the western part of Illinois:

Considering the deplorable condition in which the village of Caron delet is now, and shall be for the future, because of the exportation of

woods, the inhabitants have the honor to expose to you that, after the petition which they had the honor to present you the fifth day of last October, in order to obtain the continuation of their land, you told them that their demand could not take place; but yet you were going to make your best efforts in order to grant them forty arpens above their park.

They ask you to take into consideration that this mill gives now a great encouragement, and that they intend to sow as much grain as possible.

Therefore they intrust Mr. Gamache with the care of presenting to you these presents; and they hope that you will take into consideration their demand and the miserable condition in which they will be, and that you will grant them the continuation of the lands, taking as limits Constan's land, on the Mississippi side, and the river Des Peres, leading to the same village of Carondelet.

They have full confidence in your kindness; and believing that you will grant them their demand, they will always thank you for your goodness.

Made at the village of Carondelet the sixth day of December, seventeen hundred and ninety-six.

JN. BTE. $\overset{sa}{\underset{marque.}{\times}}$ GAMACHE.

Reply of lieutenant-governor, 7th Dec., 1796.

The land demanded is within the limits of land reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet, and the demand which is made by Gamache cannot
278 take place, nor no other concession granted in the direction of a line taken from the end of the lands of the said village and running parallel with the Mississippi one hundred and fifty arpens.

ZENON TRUDEAU.

ST. LOUIS, *Dec'r 7th*, 1796.

Certificate of Ant. Soulard, 25 Dec'r, 1797.

UPPER LOUISIANA, VILLAGE OF CARONDELET,
District of St. Louis, Illinois:

I, the undersigned surveyor commissioned by the government, to all whom these presents shall come, certify that on this day, the twenty-first day of December, in virtue of the order issued from the lieutenant-governor to Mr. de Friget, captain commandant at the said village, in order to require the inhabitants to make known the line of a land that has been granted to them on the date of the seventh day of December, 1796, which line must be parallel to that of M'rs' Ante Reilhe and Alvares, the said inhabitants, in presence of their commandant, have agreed to have their line drawn from the last limit posted at the extreme depth of their lands; which lands had been formerly surveyed by P're Choteau, in virtue of an order from the lieutenant-governor.

Having examined in what direction run the same lands, I found out that they were running S. 28° W.

I have followed the same line 23 arpents 3 pe's ½, at which distance I met the river Des Peres.

The extremity of the line on the edge of the said river has been bounded with a stone and two flints, as a witness, and a bullet of lead flattened.

The land of Alvares must be 24 feet distant from the said boundary in following the same line in a parallel manner.

And I have delivered these presents in order that the said inhabitants could verify the same.

ANTOINE SOULARD.

ST. LOUIS, OF ILLINOIS, *the 25th of December*, 1797.

Certificate of Ant'e Soulard, Feb'y 28th, 1806.

I certify, everywhere it is wanted, that the inhabitants of the village of Carondelet have requested me to survey, or to have surveyed by one of my deputies, a part of land which has been granted to them as common by the lieutenant-governor, Don Zenon Trudeau.

Mr. Bartholemy was appointed to survey the same; he went to the village of Carondelet for that purpose.

In setting to work his compass was found out of service, which event prevented the said surveying from taking place. From want of time I have been prevented from complying with the request made to me by the citizens of the establishment of Carondelet.

279 In faith of which I have delivered these presents to those interested, to use them as they want.

ANTOINE SOULARD,
Surveyor Gen'l T'y Loui'a.

ST. LOUIS, *February 28th*, 1806.

For "proceedings of old board of 1808 and 1812," see pages 26, 28, of this transcript.

CLERK.

Evidence and survey of 1808 by Bent.

(Here follows map, marked C, page 30.)

NOTE.—The inhabitants of Vide Poche show me what they said was the outer end of their field-lots, but could not find the N. W. corner.

I therefore measured a line between J. Manard and L. Lajoy to the southern boundary, on the course of S. 56½ E. 116 ch's, and from thence 24 ch's, on the same course to the Mississippi.

The S. W. corner could not be found either. The general course of the Mississippi for a considerable distance up and down from the point where my line intersected it is S. 42° W.

The courses are according to the true meridian, and the admeasurement by such a chain as the law requires.

JUNE 17TH, 1808.—Pursuant to an order of the honorable board of commissioners, under date of 15th June, 1808, I surveyed and measured the distance from the outer end of the field-lots claimed by the inhabitants of Vide Poche to the Mississippi, and find the distance to be 48 French arpens one French perch and fifteen English feet and $\frac{6144}{1000}$ of a foot.

SILAS BENT,
Principal D'y Surveyor.

RECORDER'S OFFICE,
ST. LOUIS, MISSOURI, *24th Dec'r*, 1839.

The above is a true copy taken from the original document on file in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

Bill of exceptions.

And to the admission of and every of the foregoing papers and proceedings the plaintiff then and there excepted.

The defendant next offered the survey of the United States by Rector, to which the plaintiff objects as never having been approved, as not authorized by any law of the United States, as not being recognised by the United States, and as not being properly certified, or in any manner an authentic document.

280 The court overrules the objection, and the survey and memorandum upon it was read to the jury as follows:

Survey of the U. S. by Rector, and memorandum thereon.

(Here follows map, marked D, page 32.)

Surveyed the commons of Carondelet.

Began at a stone on the bank of the Mississippi River, N. E. corner; thence N. 82° W. 35.00 to B. O. 18 in. dia., 68 links north side of the S. E. corner of Pierre Delor's, 1½ arpens on the east side of the common field of Carondelet; thence with the field, S. 15° W. 26.86; thence S. 21 W. 48.17 to the S. E. corner of Doctor Pall's land, and the S. E. do. of the field of Carondelet; thence N. 56 W. 118.0 to the S. W. corner of the field; thence S. 36 W. 58.69 to the river Des Peres, 100 links wide, runs S. 48° E. 315 chains to Gravel Creek, 50 links wide, runs S. E. 437 ch. 50 l'ks to the S. W. corner of the commons; thence S. 54 E. 264 ch's O. to a stone on the bank of the Mississippi River; thence up the river, with the meanders of the same, N. 10 E. 195 ch., N. 17 E. 38, N. 10 E. 25, N. 4 W. 51 ch., N. 20 E. 18 ch., N. 40 E. 25 ch., to the mouth of river De Pare, 2 c. 50 lk. wide; thence N. 47 E. 7.50, N. 32 E. 58 c. 50 l., N. 7 W. 15.00, N. 22 E. 21.19 to the S. E. corner of the village of Carondelet; thence up the river N. 42 L. 54 c. 50 l., N. 35 E. 4.91. Set stone N. E. corner of the village of Carondelet, which village is two lots deep, of 300 French feet each, with a street 36 do. French wide. The lots run from the river N. 59 W. 53 c. 91 l. to the northeast corner of the commons and place of beginning.

SURVEYOR'S OFFICE, ST. LOUIS,
15*th April*, 1840.

The foregoing notes are correctly copied from the original field-notes on file in this office of the survey of the Carondelet common, as executed by Elias Rector, deputy surveyor. The said notes are without date, but the survey was executed and the notes taken before the year 1817. They were, to my knowledge, on file in this office in the forepart of that year, and have always since that time been acted upon as the official notes and survey of said common, as supposed to be confirmed by the act of Congress of the 13th June, 1812. This plat is conformable to said notes.

This survey having been executed before the survey of the adjoining public lands, and the public surveys not having been properly
281 connected therewith, the adjoining fractions outside of the common were withheld from sale at the sale of the other lands in to. 43 and 44 N., R. 6 E., and 43 N., R. 7 E.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Bill of exceptions.

To the admission of which survey of Rector the plaintiff then and there excepted.

Defendant then offered the ordinances of the board of trustees of Carondelet of 1834, and the plaintiff objects that they are upon their face only extracts or parts of the proceedings, and that they do not appear to be authorized proceedings. The court overruled the objections, and the plaintiff then and there excepted thereto, and the said proceedings were read as follows:

Extracts of the proc's of b'd of trust. of Carondelet of 1834.

Extracts from the journal of the proceedings of the board of trustees of the town of Carondelet.

MARCH 8TH, 1834.

The board being organized by notice being given—

Present, Messrs. Leitensdorfer, Fasseau, Chattillion, Colburn, and Lefavre.

The board being called to order, the object of the meeting being stated by Mr. Colburn, and on motion of Mr. Colburn, the following resolution was unanimously adopted:

Resolved, That a committee of two be appointed to wait upon Joseph C. Brown, esq., and ascertain when and what time he will survey the commons belonging to Carondelet, and that the register write a communication to him on the subject.

Whereupon the chairman appointed Messrs. Colburn and Fasseau that committee.

On motion of Mr. Fasseau, the board adjourned.

MARCH 10TH, 1834.

The board being organized by notice being given thereof—

Present, Messrs. Leitensdorfer, Fasseau, Chattillion, Colburn, and Lefavre.

The board being called to order, the committee appointed to wait upon Joseph C. Brown report they have performed the duty assigned them, and here beg leave to introduce Joseph C. Brown.

Whereupon Mr. Joseph C. Brown reports to the board that he is duly commissioned and authorized to survey the commons of Carondelet, with his instructions from the surveyor-general at St. Louis, and does here most respectfully notify this honorable board that he will
282 commence the survey of said commons on to-morrow; and the chairman appoints Louis Fasseau and Joseph Chattillion as superintendents in the survey, and that they accompany the surveyor through the said survey.

On motion of Mr. Colburn, the chairman appoints Benoist Maréchal, John Bpt. Gamache, Gabriel Constant, as chain-carriers, and Baptiste Chattillion for other purposes.

MARCH 29TH, 1834.

The board being called by previous notice from the chairman—

Present, Messrs. Leitensdorfer, Fasseau, Chattillion, Colburn, and Lefavre.

The board being called to order, Mr. Lafavre's school report was read and ordered to lay on the table.

Mr. Fasseau and Chattillion report that Joseph C. Brown has completed the survey of the commons, and the duties assigned them was duly performed.

On motion of Mr. Colburn, it was ordered that all persons employed in the survey should now be paid, viz: Baptiste Gamache and Benoist Maréchal have an extra compensation of two dollars allowed them, and one dollar per day for their services; Baptiste Chattillion and Gabriel Constant, each one dollar per day for their services; and that Louis Fasseau and Joseph Chattillion be allowed one dollar $\frac{25}{100}$ per day for services rendered in the survey, and that the treasurer is hereby authorized to pay the same.

On motion of Messrs. Fasseau and Colburn, one dollar $\frac{25}{100}$ for their services in performing certain duties, obtaining papers, and searching the land-office, &c.

The above sum to be paid for every day employed in such service, and that it is hereby authorized to pay the same out of any moneys in treasury.

Mr. Colburn's bill allowed for 6 days' hire of horses and carriage, one dollar $\frac{25}{100}$ per day for services rendered.

On motion of Mr. Fasseau, the board hereby appoint Joseph Chattillion to set up a stone every ½ mile on the line of the commons where necessary, in order to designate the line properly, and employ such aid as it may require, and that the treasurer pay the bills as handed by said Chattillion.

JULY 9TH, 1834.

The board convened by notice from the chairman. Present, Messrs. Shultz, (chairman,) Guye, Chartran, Robert, and Gamache.

Mr. Chartrand offers the following resolution, which was read and unanimously adopted:

Resolved, That Peter J. Shoults, chairman of the board of trustees for the town of Carondelet, is hereby authorized to search the different offices in St. Louis for a copy of the survey of the commons of
283 said town, and obtain certain papers relative to the same, for the purpose of obtaining sufficient title to the commons, which copies and records shall be filed in the office of the register in said town.

On motion of Mr. Guye, the board claims no attendance for this day.

On motion of Mr. Robert, the board adjourned till July 14th, 1834.

MONDAY, *Sept.* 1*st*, 1834.

The board met. Present, Messrs. Shoultz, (chairman,) Chartran. John Eugene Leitensdorfer, David Briggs, and Henry Chouquette produced their certificate of an election, from under the hands of the judges appointed to hold an election *election* for three trustees, on Saturday, the 23d August. Whereupon Messrs. Leitensdorfer, Briggs, and Chouquette were declared to be duly elected trustees for the town of Carondelet, to fill the vacancies occurred in this board.

The register lays before the board the survey and confirmation certificate of the commons of Carondelet, the register being ordered to read the same; after which,

On motion of Mr. Chartrand, it is *was* ordered, that the said survey and confirmation certificate be filed in this office, and that the register have the survey framed for the benefit of the town.

F. R. Conway's account allowed for the copy of or confirmation certificate. Charles De Ward's amount allowed for a copy of the survey.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing extracts from the proceedings of the board of trustees of the former town of Carondelet are true and correct copies from the journal of said proceedings, as the same remain of record in this office.

In testimony whereof I have hereto set my hand and affixed the city seal this sixth day of January, A. D. 1854.

[SEAL.] BERNARD POEPPING, *Register.*

Bill of exceptions.

United States survey of Jos. C. Brown, No. 2965; present No. 3102. Certificate of survey 29th July, 1834, offered in evidence.

The plaintiff objects to this survey that it is not an approved survey, and that the Commissioner of the General Land-Office had the superintending control of the surveys of the commons, and that there is no approval of the survey by the Commissioner of the General Land-Office according to law, nor is there any order of the Commissioner of the General Land-Office for this survey shown.

284 The court overruled said objections, and admitted the said survey in evidence, to which the plaintiff then and there excepted.

Said survey was read as follows:

U. S. survey of Jos. C. Brown, No. 2965, &c.

(For map see original, page 36.)

Survey No. 2965, (present number 3102.)

Plat and description of the survey of the commons of Carondelet, as executed by Jos. C. Brown, deputy surveyor, from the 11th to the 17th of March, 1834, under instructions of the 10th of February, 1834, containing 9,905.29 acres of land.

Beginning at two stones, a corner of this survey, and southeast corner of the common-field of Carondelet, one of which stones is 15 inches long, 3 inches thick and 12 inches broad, the other thicker and longer and 8 inches broad; thence N. 56¼° W., along the southern boundary of said common-field, which is a line of this survey, 4 chains 50 links, and old stone, 42 chains and 50 links, to a branch 10 links wide, which runs southward 118 chains and 16 links, to a stone, the S. W. corner of said common-field and corner of this survey, on the eastern boundary-line of Alvarez's survey; thence S. 35½° W., with Alvarez's line, 60 chains, to the left bank of river Des Peres, 153 links wide, which runs eastward, 120 chains, (Saunders's door is 35 links westward;) 193 chains 85 links, a spring branch 4 links wide runs eastward 201 chains and 36 links, Alvarez's S. E. corner stone; thence N. 54° 20′ W., with Alvarez's S. W. boundary-line, 183 links, to a post at the intersection of the old of this survey with Alvarez's southwestern boundary-line, (which is 14 chains 6 links S. 54° 20′ E. of the corner in said line to section 13, 14, 23, and 24, township 44 north, range 6 east, of the 5th principal meridian,) from which post a hickory 11 inches in diameter, marked as a sight-tree of old, bears 36° E. 39 links, and a white oak, 25 inches in diameter, bears N. 54° W.,

52 links distant; thence S. 36° 20′ W., with the old line, 19 chains and 81 links, to the line between sections 23 and 24, in said township, a post, corner to fractional sections 23 and 24; 24 chains and 31 links south of the corner to sections 13, 14, 23, and 24 aforesaid, from which post a black-jack 6 inches in diameter bears N. 38½ W. 55½ links, and a post-oak 15 inches in diameter bears N. 7¼° E., 129 links distant, 20 chains 71 links, an old stone in the line; 62 chains 61 links, a road leading to Jefferson barracks; 87 chains and 21 links, to a point on the line between sections 23 and 26 in said township, corner to said fractional sections 23 and 26, (226 links east of the quarter-section corner,) from which post a red oak 9 inches in diameter bears N. 47¼ W. 98 links, and a red oak 14 inches in diameter bears S. 43½ W., 161 links
285 distant; 133 chains and 71 links, Gravois Creek, 30 links wide, runs eastward; 159 chains 73 links to a post on the line between sections 26 and 27 in said township, corner to said sections 26 and 27; 17 chains and 57 links south of the quarter-section corner, from which post a red oak 12 inches in diameter bears S. 29° E. 23 links; and a white oak 14 inches in diameter bears N. 81° E., 103 links distant; 187 chains and 16 links, to a post on the line between sections 27 and 34 in said township, corner to said sections 27 and 34, (25 chains and 19 links east of the quarter-section corner,) from which post a post-oak 25 inches in diameter bears N. 17° W. 24 links, and a red oak 13 inches in diameter bears S. 85° W. 87 links distant; 214 chains and 71 links to a road leading from Gravois to Jefferson Barracks; 271 chains and 81 links to the old S. W. corner of this survey, which is a cluster of stones, where is also set a post, from which a post-oak 20 inches in diameter bears N. 71½° E. 66 links, and a white oak 16 inches in diameter bears S. 13° E., 88 links distant; thence S. 52½° E. 22 chains 28 links to a post in the line between sections 3 and 34 in townships 43 and 44 north, range 6 east of the 5th principal meridian, for corner to said sections 3 and 34; 33 chains and 62 links east of the corner to sections 3, 4, 33, and 34 in said townships, from which post a red oak 13 inches in diameter bears S. 38½° E. 64 links, and a post-oak 18 inches diameter bears S. 55° W. 53 links distant; 82 chains 80 links, to a post on the line between sections 2 and 3 in township 43 north, range 6 east of the 5th principal meridian, for corner to said fractional sections 2 and 3; 20 links north of the quarter-section corner, from which post a red oak 14 inches in diameter bears S. 47½° W. 70 links; and a red oak 12 inches in diameter bears S. 5½° E. 74 links distant; 149 chains 90 links, a post on the line between sections 2 and 11 in said township 43 north, range 6 east, corner to said fractional sections 2 and 11, (12 chains and 58 links east of the quarter-section corner,) from which post a red oak 18 inches in diameter bears S. 37° W. 29 links, and a red oak 20 inches diameter bears S. 1½° E. 127 links; 132 chains 70 links to a post on the line between sections 7 and 12 in townships 43 and 43 north, ranges 6 and 7 east, of the 5th principal meridian, corner to said fractional sections 7 and 12, (9 chains and 71 links north of the corner to sections 7, 12, 13, and 18 in said townships and ranges,) from which post a post-oak 14 inches in diameter bears S. 18 W. 47 links, and a post-oak 12 inches in diameter bears S. 14½° E. 79 links distant; 148 chains 24 links, the S. E. corner of this survey, on the brow of the hill at the river Mississippi, which corner is a large curiously shaped stone leaning against a post-oak tree 14 inches in diameter; thence S. 84° E. 2 chains 43 links, to moderately high-water mark of the Mississippi; thence meander up the said Mississippi N. 12° E. 31 chains; north 15 chains; N. 6½°
286 E. 17 chains; N. 17° E. 18 chains 50 links, (at 9 chains on this

line is the mouth of Martigny Creek;) N. 56° E. 3.00 chains; N. 18° E. 15 chains; N. 10½° E. 8.00 chains; N. 11¾° E. 47 chains 34 links; N. 2½° E. 9 chains; N. 10° E. 31 chains, (the flag-staff at Jefferson Barracks bears N. 3° 20′ W.;) N. 19½° E. 52 chains and 38 links, (hence the flag-staff at Jefferson Barracks bears S. 87¼ W.;) N. 10° E. 34 chains and 20 links; N. 1 W. 17 chains 50 links; N. 5¾° E. 11 chains; N. 3½° E. 6 chains; N. 8¾° E. 5 chains 30 links; N. 12° E. 9 chains; N. 24¼° E. 11 chains; N. 31° E. 10 chains; N. 44° E. 9 chains; N. 47° E. 9 chains 50 links; N. 43½° E. 10 chains 88 links; the mouth of river Des Peres, N. 61½° E. 2 chains 54 links across the mouth of river Des Peres; N. 47° E. 9 chains; N. 33¾° E. 13 chains 87 links; N. 30¼° E. 44 chains; N. 5 W. 13 chains 50 links; N. 14° E. 11 chains; N. 30½° E. 20 chains; N. 38° E. 38 chains; N. 52° E. 8 chains 72 links; N. 35 E. (3 chains 58 links to the south edge of the street that passes by and north of Colburn tavern, in the village of Carondelet,) in all this course 18 chains; N. 32¾° E. 41 chains 50 links; N. 56° W. 78 links, to the N. E. corner of this survey, which is a post on the bank of the Mississippi River, from which a sycamore 10 inches in diameter bears S. 12° E. 24 links, and an elm 11 inches in diameter bears N. 46° E. 38 links distant. The connection from this corner to the S. E. corner of the common of St. Louis is as follows, namely: S. 56° E. 78 links; N. 25¼° E. 11 chains and 90 links; from said N. E. corner of this survey of the commons of Carondelet, N. 82° W. 41 chains and 35 links to a stone 18 inches long, 4 inches thick, and 12 inches broad, and set 9 inches in the ground, with the edge east; the N. W. corner thereof, in the front line of the common-fields of the village of Carondelet, 5 chains and 72 links southward of the intersection of said front line with the south boundary-line of the St. Louis commons; from said N. W. corner-stone of the Carondelet commons, S. 14° 40′ W., along the front line of said common-fields, which is a line of this survey; at 70 links a stone; at 5 chains and 10 links a stone; at 9 chains 48 links a stone; at 18 chains 21 links a stone; at 26 chains 96 links a stone, one of the corners of this survey; all these stones set of old; thence S. 26° 10′ W., along another line of the front of said common-fields, 17 chains and 47 links, a stone corner of this survey, and also one of the corners to the common-field aforesaid; said stone is 27 inches long, 5 inches thick, and 8 inches wide; thence S. 36° W. 25 chains and 64 links to the beginning.

SURVEYOR'S OFFICE, *St. Louis*, 29*th July*, 1834.

The foregoing plat and description of the survey of the commons of Carondelet, containing 9,905.29 acres, are conformable to the original field-notes on file in this office.

The said survey contains within its limits surveys No. 2023,
287 for 29.77 acres in the name of Gabriel Constant, under his confirmation for 33 arpents, as represented on the plat; also survey No. 904, for 544.44 acres in the name of Julien Chouquette, under his confirmation for 640 arpents.

Said survey of Chouquette is represented on the plat as accurately as practicable from the approximative data in the field-notes; which is the common call for the mouth of the river Des Peres, in the field-notes of Chouquette's survey and in the notes of the survey of the commons.

(Signed) E. T. LANGHAM,
Surveyor-General of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, Nov. 29th, 1849.

The foregoing record of the plat and description of a survey of the commons of Carondelet on pages one, two, and three of his book is correctly copied from the original plat and description of said survey, approved by Surveyor-General Langham on the 29th of July, 1834, on page 76 of the 3d volume of Missouri plats, on file in this office.

The original number of the approved survey, "2965," having been given to the survey of a claim of 32 arpents, confirmed to Benito Vasquez, situated in the commons of St. Louis, the number "3102" has been adopted in lieu thereof, since which time the said survey of the commons of Carondelet has been known in this office as No. 3102.

M. LEWIS CLARK,
Surveyor-General of Ills. and Mo.

OFFICE OF THE SURVEYOR-GENERAL,
St. Louis, Dec. 14th, 1850.

I certify that the foregoing plat and description of survey No. 3102, (commons of Carondelet,) the certificate of approval of the 29th July, 1834, by Surveyor-General Langham, and certificate of record of the surveyor-general of the States of Illinois and Missouri of the 29th November, 1849, are correctly copied from pages 1, 2, 3, and 4 of the record of surveys of Carondelet lands now in this office.

M. LEWIS CLARK,
Surveyor-General.

Bill of exceptions.

Defendant offers the certificate of confirmation by the recorder of land-titles for the commons of Carondelet, to which the plaintiff objects as not authorized by any law of the United States and as incompetent and irrelevant, but the court admitted the same as evidence to the jury, and the plaintiff then and there excepted.

288 The same is read as follows:

Certificate of confirm'n by recorder of land-titles, &c.

OFFICE OF THE RECORDER OF LAND-TITLES,
St. Louis, Missouri.

A record of confirmation certificates issued by F. R. Conway, recorder of land-titles in the State of Missouri, on claims to town and village lots, out-lots, and common-field lots, confirmed by the 1st section of the act of Congress of the 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," in conformity to instructions from the Commissioner of the General Land-Office of the 8th of February and 17th May, 1831; commencing on the 12th day of April, A. D. 1834.

(Signed) F. R. CONWAY,
Recorder of Land-Titles in the State of Missouri.

No. 2.

OFFICE OF THE RECORDER OF LAND-TITLES,
St. Louis, Missouri.

It is hereby certified that under the provisions of the first section of

the act of Congress approved on the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," and the several acts of Congress supplementary or having reference thereto, approved on the 26th day of May, 1824, and the 27th day of January, 1831, the inhabitants of the village of Carondelet, in the county of St. Louis, in this State, have been confirmed in their claim in common to six thousand arpens of land, being in townships 43 and 44 north, ranges 6 and 7 east of the 5th principal meridian; the same having been regularly surveyed, as appears by a plat and field-notes thereof returned to this office by the surveyor of the lands of the United States in the States of Illinois and Missouri, certified by him on the 29th day of July, 1834, and numbered 2965, which accompanies this certificate, and to which I refer for a more full and complete description of the tract above mentioned, containing, according to said survey and certificate, nine thousand nine hundred and five acres and twenty-nine hundredths of an acre.

In testimony whereof I have hereunto subscribed my name this 22d day of August, A. D. 1834.

(Signed) F. R. CONWAY,
Recorder of Land-Titles in the State of Missouri.

Delivered the original of the foregoing certificate, together with the survey therein mentioned, to the authorities of the village of Carondelet.

(Signed) F. R. CONWAY,
Recorder of Land-Titles in the State of Missouri.

289 OFFICE OF THE RECORDER OF LAND-TITLES,
St. Louis, 6th January, 1854.

I certify that the foregoing is correctly transcribed from pages 1, 2, and 3 of the book of confirmation certificates on file in this office.

ADOLPHE RENARD,
U. S. Recorder of Land-Titles in the State of Missouri.

Bill of exceptions.

Defendant offers the certificate of the register of Carondelet of certain proceedings before the board of trustees of Carondelet, of 11th April, 1839, and of 25th April, 1839, and 17th June, 1839, to which the plaintiff objects as not being authorized by any law, and as improperly certified. The court admitted the same as evidence to the jury, to which the plaintiff then and there excepted.

The said proceedings were read as follows:

Cert. of reg'r of Car'et of proceedings, &c.

At a meeting of the board of trustees of the former town of Carondelet, held on the eleventh day of April, 1839, there were present Messrs. N. Paupe, Joseph Leblond, Louis Gayon, J. B. Menard, and Isidore Barada.

Amongst other proceedings, the following were had, to wit:

No. one.

"Mr. Louis Gayon makes motion that the remainder of the commons north of river Des Peres be surveyed into lots of different sizes, as will

be hereafter provided. The yeas and nays being called on said motion, it passed unanimously.

"Whereupon Mr. Zenon Mackay, surveyor, comes forward and proposes to make said survey according to the directions of the board, at six dollars per day, by being furnished with hands sufficient to do the same, and make out a neat and explicit plat of the said survey for the additional sum of thirty dollars.

"On motion of J. Leblond, Mr. Mackay's proposal was unanimously accepted."

And at a meeting of the same board, held on the 25th day of April, 1839, there were present all the members.

Among others, the following proceedings were had, to wit:

No. two.

"On motion of J. Leblond, resolved, that the remainder of the commons north of river Des Peres be leased at public vendue, on the eighth of July next and following days, and that the same be advertised in the Republican and German papers weekly printed in the city of St. Louis."

290 And at a special meeting of said board, held on the seventeenth day of June, 1839, there were present Messrs. N. Paupe, L. Fassen, Joseph Leblond, J. B. Menard, and Isidore Barada.

And among others the following proceedings were had, to wit:

No. three.

"Mr. Joseph Leblond presents the following ordinance:

"An ordinance to lease the Carondelet commons north of river Des Peres. (See ordinance book, No. 51.)

"The ordinance having been read a first and second time, the board dispensed with the ordinary rule for a third reading, and it was unanimously passed."

STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing extracts from the proceedings of the board of trustees of the former town of Carondelet, enclosed in quotation marks, and numbered one, two, and three in red ink, are correct and true copies from the proceedings of said board under the respective dates above mentioned, as fully as the same remain of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said city, at office, this twenty-third day of June, A. D. eighteen hundred and fifty-five.

[SEAL.] BERNARD POEPPING, *Register.*

Bill of exceptions.

Defendant offers the ordinance No. 51, for leasing the commons of Carondelet, to which the plaintiff objects as irrelevant and incompetent, but the court admits the same to be read to the jury, to which plaintiff then and there excepted.

The same was read as follows:

Ord. No. 51 of Car'd'lt to lease commons, &c.

No. 51. An ordinance to lease the Carondelet commons north of the river Des Peres.

Be it ordained by the board of trustees of town of Carondelet, That on the fifteenth day of July, eighteen hundred and thirty-nine, and following days, all that portion of the Carondelet commons lying north of river Des Peres shall be leased at public outcry to the highest and best bidder for the term of ninety-nine years, and renewable forever, reserving rents to be paid annually to the said trustees or their successors agreeably to the following terms, to wit:

1st. Upon any sale the purchaser is not to pay the amount bid, but an interest of two per cent. a year on the purchase-money as a yearly rent.

291 2d. At the end of ninety-nine years from the day of sale, and every ninety-nine years thereafter, the purchaser shall pay four per centum on the purchase-money as a yearly rent.

3d. Should the interest remain unpaid for six months after due, the board of trustees may annul the sale, and proceed to sell again without molestation or hindrance on the part of the delinquent lessee.

4th. Upon all such sales deeds are to be executed in duplicate by the board of trustees, and signed and acknowledged by the purchaser, containing all the conditions and provisions which the board of trustees may establish to secure the payment and collections of the annual rent.

5th. If a purchaser neglect or refuse to execute such deed, the lot purchased may be resold; and if it should not bring the same first bid, the difference may be recovered from the first purchaser before a justice of the peace.

6th. The purchaser shall pay for the execution of each duplicate lease two dollars and a half; and also for the expenses of survey, as follows, to wit: For all lots or blocks of three arpens or under, $3.50; for all lots containing over three arpens, thirty cents per arpent.

Passed by board of trustee June 17th, 1839.

Approved: NAS. PAUPE, *Chairman.*

Attest: P. L. McLAUGHLIN, *Reg.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do hereby certify that the foregoing ordinance, numbered 51, entitled "An ordinance to lease the Carondelet commons north of river Des Peres," and passed by the board of trustees of the former town of Carondelet June 17th, 1839, is a true and correct copy of the original ordinance, as fully as the same now remains of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said city, at office, this twenty-third day of June, A. D. eighteen hundred and fifty-five.

[SEAL.] BERNARD POEPPING, *Register.*

Bill of exceptions.

Defendant offers the plat of survey of Zeno Mackay of the commons of Carondelet north of the river Des Peres, to which plaintiff objects that the same is not properly authenticated, that there are memoranda outside of survey incompetent, and is irrelevant and incompetent; but

the court admitted the same to be read in evidence to the jury, to which the plaintiff then and there excepted.

The said was read and shown to the jury, as follows:

292 *Plat of survey of Zeno Mackay.*

(For plat see original, page 43.)

The annexed plat represents a portion of the Carondelet commons of the town of Carondelet, which has been laid off and surveyed by order of the trustees of said town of Carondelet, a portion of which is bounded north by the common-fields of Carondelet, and a portion of it is bounded north by the common-fields of St. Louis, east by the Mississippi River, south by the river Des Texas, and west by Alvarez's tracts of land; and I, Peter D. Barrada, as chairman of the board of trustees of said town of Carondelet, do hereby declare that the streets and alleys as laid off upon said plat to be relinquished to the use of the public forever.

PETER D. BARRADA, [SEAL.]

Chairman of the Board of Trustees of the Town of Carondelet.

Filed May 25th, 1847.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis:

Be it remembered, on this 25th day of May, 1874, before me, the undersigned, clerk of the St. Louis county court, came Peter D. Barada, esq., chairman of the board of trustees of the town of Carondelet, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and, as said chairman of the board of trustees of said town of Carondelet, acknowledged the same to be his act and deed for the purposes therein expressed.

In testimony whereof I have hereto set my hand and affix' the seal of said court, at office in St. Louis, the date last above written.

STEPHEN D. BARLOW, *Clerk.*

STATE OF MISSOURI,
County of St. Louis:

I, the undersigned, recorder in and for the county of St. Louis, certify the foregoing to be a true copy of a plat of a portion of the Carondelet commons of the town of Carondelet, together with the dedication, certificate of acknowledgment, and date of filing thereof, as fully as the same remains of record in my office in plat-book No. 2, page 44.

Witness my hand and official seal the day of , 1858.

Bill of exceptions.

Defendant offers in evidence leases made by the inhabitants of Carondelet to Isaac B. Burbage 10th August, 1840; to Bryan Mulanphy 7th September, 1843; to Patrick L. McLaughlin and John R.
293 Dicks of the 18th January, 1845; and the city of Carondelet to N. Nicholas Demeuil 31 May, 1851, and to Alexander Kayser 18th October, 1851, deeds of quitclaim, to which and each of which the plaintiff objects that the same are incompetent and irrelevant, not authorized by any law, not binding upon the plaintiff as an estoppel, and that defendant has no privity with either of the said lessees or the grantee.

But the court admits the same and each of them to be read to the jury, to which the plaintiff then and there excepted.

The same were read as follows:

Lease of Carondelet to J. B. Burbage.

This indenture, made and executed at the town of Carondelet, in the county of St. Louis, in the State of Missouri, this tenth day of August, in the year of our Lord one thousand eight hundred and forty, by and between the board of trustees of the town of Carondelet aforesaid, parties of the first part, and Isaac B. Bourbage, party of the second part, witnesseth: That under and by virtue of the ordinances passed by the said board of trustees of the town of Carondelet, providing for the leasing of that portion of the commons of said town of Carondelet lying north of the river Des Peres, the said parties of the first part, for and in consideration of the rents reserved and the covenants and agreements hereinafter set forth on the part of the said party of the second part, do hereby grant, demise, and to farm let unto the said party of the second part, his executors, administrators, and assigns, all that certain tract, piece, and parcel of land lying and being in that portion of the commons of said town of Carondelet above mentioned, lying north of the river Des Peres, and containing two hundred and ninety-six feet west, three hundred and twenty feet south, three hundred east, and two hundred and seventy-eight north, being lot twenty, (20,) in survey No. one, (1,) as laid down and designated on the plat of the subdivision of said portion of the commons of the town of Carondelet made under the directions of said board of trustees by Zeno Mackay, and to be found on file among the records in the office of the recorder of the county aforesaid, to which said plat reference is made for a more full and minute description of the tract of land aforesaid: to have and to hold the said tract of land unto the said party of the second part, his executors, administrators, and assigns, for and during the full end and term of ninety-nine years, commencing from and after the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty, and fully to be complete and ended, subject, however, to the conditions and stipulations hereinafter mentioned, he, the said party of the second part, his executors, administrators, and assigns, rendering to the said parties of the first part and to their successors in office the yearly rent of ten
294 dollars and sixty cents, payable at the end of each and every year during the continuance of the said term. And it is covenanted and agreed by and between the parties aforesaid that at the end of said term the lease shall be renewable at the option of the said party of the second part, his executors, administrators, and assigns, upon giving to the parties of the first part of their successors in office, in every instance, a notice in writing of the wish to renew the same three months at least before the end of the term; and every renewed lease shall contain all the covenants, agreements, and stipulations herein contained, with this exception only, that the annual rents to be renewed upon every renewal shall be double the amount of the above-mentioned yearly rent. And it is further covenanted and agreed by and between the parties aforesaid, that if at any time the year's rent of any year or any part thereof remains unpaid six months after due, the said parties of the first part or their successors in office may terminate this lease by order or resolution, to be entered on record among the acts and proceedings of the said board, declaring such lease void, whereupon said lease shall ipso fact' cease, end, and determine; and the trustees may enter and take possession of the

demise premises free from any claim of the delinquent lessee, his executors and administrators or assigns; and the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant with the parties of the first part and their successors in office that he or they will pay the rents reserved as aforesaid yearly and at the end of each and every year during the continuance of the said term, and also shall and will well and truly pay or cause to be paid all the taxes, rates, charges, and assessments whatsoever which now are and shall or may at any time hereinafter during the continuance of the said term hereby demised be rented, taxed, charged, or assessed on the said demised premises or any part thereof.

And it is further covenanted and agreed by and between the parties aforesaid, their successors in office or legal representatives, that nothing herein contained shall be construed to imply a covenant or quiet enjoyment on the part of the said parties of the first part and their successors to and with the said parties of the second part and his legal representatives.

In testimony whereof the parties aforesaid have executed this deed in duplicate, the chairman of said board signing his name, and the register of said *of said* corporation, under the corporate seal, attesting both parts, and the said party of the second part signing his name and affixing his seal to both parts of this indenture on the day, year, and at the place in this behalf first above written.

[SEAL] JOSEPH LEBLOND, *Chairman.*
ISAAC B. BURBBAGE, [SEAL.]
Attest: P. L. McLAUGHLIN, *Register.*

295 STATE OF MISSOURI,
County of St. Louis, ss :

Be it remembered that on this twenty-second day of August, in the year of our Lord one thousand eight hundred and forty, before the undersigned, a justice of the peace within and for the county aforesaid, came Joseph Le Blond and Isaac B. Burbbage, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledge the same to be their act and deed for the purposes therein mentioned.

PETER D. BARADA,
Justice.

Filed for record September 5, 1840, and recorded October 8th, 1840.
JNO. RULAND,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from the trustees of Carondelet to Isaac B. Burbbage, together with the dates of filing and recording thereof, as fully as the same remains of record in my office in book 6², page 1.

[SEAL.] Witness my hand and official seal this 17th day of February, 1858.

C. KEEMLE, *Recorder.*
P'r J. CONRAD, *D'y.*

Lease of Carondelet to B. Mullanphy.

This indenture, made and executed at the town of Carondelet, in the county of St. Louis, in the State of Missouri, this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and forth-three, by and between the board of trustees of the town of Carondelet aforesaid, parties of the first part, and Bryan Mullanphy, party of the second part, witnesseth: That under and by virtue of the ordinances passed by the said board of trustees of the town of Carondelet, and providing for the leasing of that portion of the common of said town of Carondelet lying north of the Rivere des Peres, the said parties of the first part, for and in consideration of the rents reserved and the covenants and agreements hereinafter set forth on the part of the said party of the second part, do hereby grant, demise, and to farm let unto the said party of the second part, his executors, administrators, and assigns, all that certain tract, piece, and parcel of land lying and
296 being in that portion of the common of said town of Carondelet above mentioned, lying north of the Riviere des Peres, and being fractional blocks number twenty-eight and twenty-nine, (28 and 29,) in in survey No. one, (1,) as laid down and desiguated on the plat of the subdivision of said portion of the common of the town of Carondelet made under the direction of said board of trustees by Zeno Mackay, and to be found on the file among the records in the office of the recorder of the county aforesaid, to which said plat reference is made for a more full and minute description of the tract of land aforesaid: to have and to hold the said tract of land unto the said party of the second part, his executors, administrators, and assigns, for and during the full end and term of ninety-nine years, commencing from and after the twenty-first day of June, in the year of our Lord one thousand eight hundred and forty-three, and fully to be completed and ended, subject, however, to the conditions and stipulations hereinafter mentioned, he, the said party of the second part, his executors, administrators, and assigns, *renting* to the said parties of the first part and to their successors in office the yearly rent of ninety cents, ($0.90,) payable at the end of each and every year during the continuance of said term. And it is covenanted and agreed by and between the parties aforesaid that at the end of said term this lease shall be renewable at the option of the said party of the second part, his executors, administrators, or assigns, upon giving to the parties of the first part or their successors in office, in every instance, a notice in writing of the wish to renew the same three months at least before the end of the term; and every renewed lease shall contain all the covenants, agreements, and stipulations herein contained, with this exception only, the annual rents to be reserved upon every renewal shall be double the amount of the above-mentioned yearly rent. And it is further covenanted and agreed by and between the parties aforesaid that if at any time the rent aforesaid for six whole months shall be in arrear and unpaid, the said parties of the first part or their successors in office may terminate this lease by order or resolution, to be entered on record among the acts and proceedings of said board, and may enter and take possession of the demised premises free from any claims of the delinquent lessee, his executors, administrators, or assigns; and the said party of the second part, for himself, his executors, administrators, and assigns, do' hereby covenant with the parties of the first part, or their successors in office, that or they will pay the rents reserved as aforesaid yearly, and at the end of each and every

year during the continuance of the said term, and also shall and will well and truly pay or cause to be paid all the taxes, rates, charges, and assessments whatsoever which now are, shall, or may at any time hereafter, during the continuance of the said term hereby demised, be rated, taxed, charged, or assessed on the said demised premises,
297 or any part thereof. And it is further covenanted and agreed by and between the parties aforesaid, their successors in office or legal representatives, that nothing herein contained shall be construed to imply a covenant of quiet enjoyment on the part of the said parties of the first part and their successors to and with the said party of the second part and his legal representatives.

In testimony whereof the parties aforesaid have executed this deed in duplicate, the chairman of said board signing his name, and the register of said corporation, under the corporate seal, attesting both parts, and the said part' of the second part signing his name and affixing his seal to both parts of this indenture on the day and year and at the place in this behalf first above written.

[SEAL.] JOSEPH LEBLOND, *Chairman.*
BRYAN MULLANPHY. [SEAL.]
Attest: JAMES C. EVANS, *Register.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and forty-three, before the undersigned, a justice of the peace within and for the county aforesaid, came Joseph Leblond and Bryan Mullanphy, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. Taken and certified the day and year aforesaid.

PETER D. BARADA,
Justice.

Filed for record 2d, and recorded October 12th, 1843.

HENRY J. WISE,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from the board of trustees of the town of Carondelet to Bryan Mullanphy, of the certificate of acknowledgment, and also of the date of filing and recording, as the same remains of record in my office, book D, No. 3, p. 266.

Witness my hand and seal this 17th day of February, 1858.

[SEAL.] C. KEEMLE, *Recorder.*

298 *Lease of Carondelet to McLaughlin and Jno. R. Dicks.*

This indenture, made and executed at the town of Carondelet, in the county of St. Louis, in the State of Missouri, this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, by and between the board of trustees of the town of Carondelet aforesaid, parties of the first part, and Patrick L. McLaughlin and John R. Dicks, parties of the second part, witnesseth: That under and by

virtue of the ordinances passed by the said board of trustees of the town of Carondelet, and providing for the leasing of that portion of the common of said town of Carondelet lying north of the river Des Peres, the said parties of the first part, for and in consideration of the rents reserved and the covenants and agreements hereinafter set forth on the part of the said parties of the second part, do hereby grant, demise, and to farm let unto the said parties of the second part, their executors, administrators, and assigns, all that certain tract, piece, and parcel of land lying and being in that portion of the common of said town of Carondelet above mentioned lying north of the river Des Peres, and being fractional block number, (C,) in survey one, (1,) as laid down and designated on the plat of the subdivision of said portion of the common of the town of Carondelet made under the directions of said board of trustees by Zeno Mackay, and to be found on file among the records in the office of the recorder of the county aforesaid, to which said plat reference is made for a more full and minute description of the tract of land aforesaid:

To have and to hold the said tract of land unto the said parties of the second part, their executors, administrators, and assigns, for and during the full end and term of ninety-nine years, commencing from and after the eight' day of December, in the year of our Lord one thousand eight hundred and forty-three, and fully to be completed and ended, subject, however, to the conditions and stipulations hereinafter mentioned, they, the said parties of the second part, their executors, administrators, and assigns, rendering to the said parties of the first part and to their successors in office the yearly rent of eight dollars and two cents, payable at the end of each and every year during the continuance of the said term. And it is covenanted and agreed by and between the parties aforesaid that at the end of said term this lease shall be renewable at the option of the parties of the second part, their executors, administrators, or assigns, upon giving to the parties of the first part or their successors in office, in every instance, a notice in writing of the wish to renew the same three months at least before the end of the term; and every renewed lease shall contain all the covenants, agreements, and stipulations herein contained, with the exception only that the annual rents to be reserved upon every renewal shall be double the amount of the above-mentioned yearly rent.

299 And it is further covenanted and agreed by and between the parties aforesaid that if at any time the rent aforesaid for six months shall be in arrear and unpaid, the said parties of the first part or their successors in office may terminate this lease by order or resolution, to be entered on record among the acts and proceedings of the said board, and may enter and take possession of the demised premises free from any claim of the delinquent lessee', their executors, administrators, or assigns.

And the said parties of the second part, for themselves, their executors, administrators, and assigns, do hereby covenant with the parties of the first part, and their successors in office, that they will pay the rents reserved as aforesaid yearly, and at the end of each and every year, during the continuance of the said term, and also shall and will well and truly pay or cause to be paid all the taxes, rents, charges, and assessments whatsoever, which now are, shall, or may, at any time hereafter during the continuance of the said term hereby demised, be rated, taxed, charged, or assessed on the said demised premises, or any part thereof. And it is further covenanted and agreed by and between the parties aforesaid, their successors in office or legal representatives,

that nothing herein contained shall be construed to imply a covenant of quiet enjoyment on the part of the said parties of the first, and their successors, to and with the said parties of the second part and their legal representatives.

In testimony whereof the parties aforesaid have executed this deed in duplicate, the chairman of said board signing his name, and the register of said corporation, under the corporate seal, attesting both parts, and the said parties of the second part signing their names and affixing their seal to both parts of this indenture on the day and year and of the place in this behalf first above written, the erasures made in said deed done before signing.

[SEAL] JOSEPH LEBLOND, *Chairman.*
PATRICK L. McLAUGHLIN. [SEAL.]
JOHN K. DICKS. [SEAL.]

Attest:
[L. S.] GEO. F. EICHILBERGER,
Register.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this twentieth day of January, A. D. eighteen hundred and forty-five, before me, Frederick Kretschmar, a justice of the peace within and for the county of St. Louis aforesaid, came John K. Dicks, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

300 Taken and certified the day and year last aforesaid.

FRED. KRETSCHMAR,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, before the undersigned, a justice of the peace within and for the county aforesaid, came Joseph Leblond, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as having executed the same as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

HAMILTON MICHEAU,
Justice.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this first day of April, A. D. eighteen hundred and forty-five, before the undersigned, a justice of the peace within and for the county aforesaid, appeared Patrick McLaughlin, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

ALPHONSE WETMORE,
Justice of the Peace.

Here follows, on the above and foregoing lease, "assignments of McLaughlin and Dicks to Peter A. and Patrick Walsh, together with their acknowledgments."—*Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from the trustees of Carondelet to Patrick McLaughlin and John R. Dicks, together with the three certificates of acknowledgments and the assignments of McLaughlin and Dicks to Peter A. and Patrick Walsh, together with their acknowledgments, as fully as the same remains of record in my office in Book A 5, page 47.

Witness my hand and official seal this 18th day of February, 1858.

[SEAL.] C. KEEMLE, *Recorder*,
Per J. CONRAD, *Deputy.*

301 *Lease of Carondelet to N. Nicholas Demeuil.*

Know all men by these presents that the city of Carondelet, pursuant to an ordinance of said city approved on the thirtieth day of April, in the year eighteen hundred and fifty-one, and in consideration of the sum of one hundred dollars to them in hand paid by N. Nicholas Demeuil, who claims to be the actual lessee of all that certain tract, piece, and parcel of ground lying and being in that portion of the common of said city of Carondelet, formerly the common of the town of Carondelet, lying north of the Riviere des Peres, and being lot number twenty (20) in survey number one, (1,) as laid down and designated on the plat of the subdivision of said portion of the common of said city of Carondelet, formerly the common of said town of Carondelet, made under the direction of the board of trustees of said town by Zeno Mackay, and to be found on file among the records in the recorder's office of St. Louis County, to which said plat reference is made for a more full and minute description of the tract of land aforesaid, have granted, remised, released, and forever quitclaimed, and do by these presents grant, remise, release, and forever quitclaim, to the said N. Nicholas Demeuil, the tract, piece, and parcel of land aforesaid, to have and to hold the same to him, the said N. Nicholas Demeuil, and to his heirs and assigns, forever. This deed is intended to be, and is, a pure, unqualified, and unequivocal quitclaim deed.

In testimony whereof, under the provisions of said ordinance, the mayor of said city has hereto signed his name, and the register of said city has attested the same, under the corporate seal of said city, this thirty-first day of May, in the year eighteen hundred and fifty-one.

[SEAL.] JAMES B. WALSH, *Mayor.*
Attest: BERNARD POEPPING, *Register.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this thirty-first day of May, in the year eighteen hundred and fifty-one, appeared James B. Walsh, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowl-

edged the same to be his act and deed, as mayor of the city of Carondelet, for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

Filed and recorded June 4th, 1851.

S. D. BARLOW, *Recorder.*

302 STATE OF MISSOURI,
County of St. Louis, ss:

The undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from the city of Carondelet to N. Nicolas Demeuil, of the certificate of acknowledgment, and also of the date of filing and recording, as the same remains of record in my office in Book Y, page 159.

Witness my hand and official seal this 17th day of February, 1858.

[SEAL.] C. KEEMLE, *Recorder.*

Lease of Carondelet to H. & Alex. Kayser.

Know all men by these presents that the city of Carondelet, pursuant to an ordinance of said city approved on the thirtieth day of April, in the year eighteen hundred and fifty-one, and in consideration of the sum of two hundred and sixty-seven dollars and thirty-three and one-third cents to them in hand paid by Henry Kayser and Alexander Kayser, who claims to be the actual lessee for all that certain tract, piece, or parcel of land lying and being in that portion of the common of the town of Carondelet lying north of the river Des Peres, and being fractional block number C, in survey one, (1,) as laid down as designated on the plat of the subdivision of said portion of the common of the town of Carondelet, made under the direction of the board of trustees of said town by Zeno Mackay, and to be found on file among the records in the office of recorder of county of St. Louis, to which said plat reference is made for a more full and minute description of the tract of land aforesaid, have granted, remised, released, and forever quitclaimed, and do by these presents grant, remise, release, and forever quitclaim, to the said Henry Kayser and Alexander Kayser the fractional block number C, in survey one, (1,) aforesaid: to have and to hold the same to the said Henry Kayser and Alexander Kayser, and to his heirs and assigns, forever. This deed is intended to be and is a pure, unqualified, and unequivocal quitclaim deed.

In testimony whereof, under the provisions of said ordinance, the mayor of said city has hereto signed his name, and the register of said city has attested the same under the corporate seal of said city, this eighteenth day of October, in the year eighteen hundred and fifty-one.

Attest:

BERNARD POEPPING, [SEAL.]
Register.

JAMES B. WALSH, *Mayor.*

STATE OF MISSOURI,
County of St. Louis, ss:

303 Be it remembered that on this eighteenth day of October, in the year eighteen hundred and fifty-one, appeared James B. Walsh, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as

party thereto, and acknowledged the same to be his act and deed, as mayor of the city of Carondelet, for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

Filed and recorded October 18, 1851.

S. D. BARLOW,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from the city of Carondelet to Henry Kayser and Alexander Kayser, of the certificate of acknowledgement, and also of the date of filing and recording, as the same remains of record in my office, Book B, No. 6, page 152.

Witness my hand and official seal this 18th day of February, 1858.

[SEAL.] C. KEEMLE,
Recorder.

Bill of exceptions.

Defendant then offered the plat and description of the out-boundary of Carondelet of 14th of November, 1853, to which the plaintiff then and there objected on the ground that the same was not made pursuant to any authorized or actual survey on the ground, and that the same was not authorized by any existing survey, and that the same was the retracing of a line of survey not approved at the time of the platting of the survey by the Commissioner of General Land-Office, and that it was the retracing of a line of a survey then standing disapproved by the Secretary of the Interior; but the court overruled said objections, and admitted said plat to be read in evidence to the jury, to which plaintiff then and there excepted.

The said plat and memorandum upon it were read and shown to the jury, as follows:

(For plat see original, page 54.)

Plat and description of the survey of the out-boundary of the village or town of Carondelet, in the Territory (now State) of Missouri, as executed under instructions of William Rector, the principal deputy surveyor of the United States for said Territory, prior to the year 1817, and retraced and connected with the adjoining surveys, under the instructions of Elias T. Lanham, surveyor-general of the United States for the district of Illinois and Missouri, in the month of March, 1834, in-
304 cluding the out-lots, the common-field lots of the common-field of said town, and the common thereto belonging, made in obedience to and in pursuance of the first section of the act of Congress approved on the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

DESCRIPTION.

Beginning at the upper and most eastern corner of the common of Carondelet, at the right bank of the Mississippi River, marked A on the plat; thence north 56 W., 78 links to corner B; thence N. 82° W., with the most northern line of the survey of the said common, 41 chains 35 links

to corner C; thence N. 14° 35′ E., with the eastern boundary of the common-field of Carondelet, 62 chains 48 links to corner D; thence north 56° 15′ W., with the northern boundary of said common-field, 116 chains 27 links to the most northern corner of the common-field marked E; thence with the western boundary of the common-field of Carondelet, S. 15° 30′ W. 88 chains 97 links to corner F; S. 26° 10′ W., 17 chs. 53 lks., to G; S. 35° 30′ W., 26 chs. 10 lks., to the most western corner of the common-field, and a corner of the common of Carondelet, on the S. E. boundary of Eugene Alvarez's tract, survey No. 1339; thence continue the course S. 35° 30′ W., along Alvarez's line, 201 chs. 36 links, (in all on this course 227 chs. 46 lks.,) to corner H; thence N. 54° 20′ W., 1 ch. 83 links to corner I; thence continue along the westerly boundary of the common, S. 36° 30′ W., 271 chs. 81 links to the most western corner of said common, marked K; thence with the southerly boundary of the common S. 52° 30′ E., 149 chs. 90 lks. to corner L; S. 53° 30′ E., 148 chs. 24 lks. to corner M; S. 84° E. 2 chs. 43 lks. to lower corner of common of Carondelet, on bank of the Mississippi River, marked N; thence with the meander of the right bank of the Mississippi River, up-stream, to the beginning corner at A. Within the line above described there are contained, viz: Survey No. 3102 of the common of Carondelet, including the village of Carondelet and the several individual tracts which are situated within it, with an area of 9,905 acres and 29 hundredths of an acre, and survey No. 3103 of the common-field of said village, containing 1,500.63 acres, making an aggregate area of 11,405 acres $\frac{92}{100}$ of an acre, and being situate in township' 43 and 44, of range 6 and 7, and township 45, R. 7, all north of the base-line and E. of the 5th p'l meridian, in the State of Missouri.

OFFICE OF SURVEYOR-GENERAL FOR
DISTRICT OF ILLINOIS AND MISSOURI,
St. Louis, 14th November, 1853.

The above plat and description of the survey of the out-boundaries of the Carondelet lands, made out pursuant to the provisions of
305 the act of Congress referred to in the foregoing caption, have been examined, and are hereby approved.

(Signed) JNO. LOUGHBOROUGH,
Surveyor-General.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 22d, 1855.

The above plat and description of the survey of the out-boundary lines of Carondelet and the annexed note and certificate of approval thereto are correctly copied from the original on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

Bill of exceptions.

Act of Missouri legislature, approved 6 Feb'y, 1839, read to the jury, authorizing leases of the Carondelet commons, as follows:

By consent of parties, this act may be read from the session acts of 1839, and need not be set forth here.

Defendant then read to the jury the ordinance No. 41, p. 54, of the city of Carondelet, of Oct. 4, 1851, to A. H Menkens, contract as follows:

Ord. No. 41 of City of Carondelet.

No. 41.—An ordinance concerning the claim of the city to the portion of land lying north of the northern line of the city, and claimed to be a part of the Carondelet commons.

Be it ordained by the city council of the city of Carondelet, as follows:

SEC. 1. That the city of Carondelet enters into the following contract with Anthony H. Menkens, to wit:

This agreement, made and entered into this first day of October, eighteen hundred and fifty-one, between "The City of Carondelet," of the first part, and Anthony H. Menkens, of the second part, witnesseth: That whereas the following portion of the common of Carondelet is in the adverse possession of divers persons, to wit, all that portion of said common which lies north of the present corporate limits of said city, and between the Mississippi River and the common-field of Carondelet, and bounded on the east by the Mississippi River; on the south by the northern boundary-line of said city, as incorporated by the legislature of this State at its last session; on the west by the eastern boundary line of said common-field; and on the north by a line beginning on the west bank of said river at a point well known by the name of "Sugar Loaf," and running westward at right angles to said river, being all of the common owned by said city, or the inhabitants thereof, north of said northern boundary-line of said city; and whereas the persons
306 who are in the adverse possession of the above-described portion of said common deny the right of the good people of this city to the same, and it has become necessary to dispossess said persons holding adversely as aforesaid; and in so doing it may become necessary to bring and maintain many expensive suits, to make new surveys, and incur great expense at St. Louis and at Washington City in getting orders for said surveys, and in getting the same received and approved by the proper officers, and to make many compromises, arrangements, and adjustments with said persons holding adversely as aforesaid; and whereas the said party of the second part is willing to run all risks, and bear all necessary expenses in obtaining said portion of said common, for one-half in fee-simple of all that can be obtained by suit, compromise, or otherwise:

Therefore, in consideration of the premises, it is agreed between said party of the first part and said party of the second part as follows, to wit:

First. The said party of the second part is to dispossess all persons holding adversely as aforesaid, if the same can be lawfully done.

Second. The said party of the second part is to bear all necessary expense in obtaining said portion of said common by suit, compromise, or otherwise.

Third. The said party of the first part is to convey in fee-simple to said party of the second part, at such time or times as he may appoint, one undivided half of such portion or portions of said common as he can obtain by suit, compromise, or otherwise; but no compromise is to be made without the approbation and consent of the city counsel of said city.

Fourth. The said party of the second part is to use all reasonable exertions to fulfil his part of this agreement; and,

Fifth. The said party of the second part, in carrying into execution this agreement, shall have the right and privilege of using the name of "The City of Carondelet" in all suits, actions, and proceedings in all courts and elsewhere.

SEC. 2. The mayor shall forthwith execute and acknowledge said contract in duplicate in behalf of the city, and cause the same to be attested by the register under the corporate seal.

This ordinance shall take effect and be in force from and after its passage.

Approved Oct. 4, 1851.

Bill of exceptions.—Contract between Carondelet and A. H. Menkens.

Defendant then read to the jury the contract with A. H. Menkens of Oct. 1st, 1851, acknowledged the 4th day of October, 1851, as follows:

This agreement, made and entered into the first day of October,
307 eighteen hundred and fifty-one, between the "City of Carondelet,"
of the first part, and Anthony H. Menkens, of the second part, witnesseth: That whereas the following portion of the common of Carondelet is in the adverse possession of divers persons, to wit, all that portion of said common which lies north of the present corporate limits of said city and between the Mississippi River and the common-field of Carondelet, and bounded on the east by the Mississippi River; on the south by the northern boundary line of said city, as incorporated by the legislature of the State at its last session; on the west by the eastern boundary-line of said common-field, and on the north by a line beginning on the west bank of said river at a point well known by the name of "Sugar Loaf," and running westward at right angles to said river, being all of the common owned by said city, or the inhabitants thereof, north of said northern boundary-line of said city; and whereas the persons who are in the adverse possession of the above-described portion of said common deny the right of the good people of this city to the same, and it has become necessary to dispossess said persons holding adversely as aforesaid; and in so doing it may be necessary to bring and maintain many expensive suits, to make new surveys, and incur great expense at St. Louis and at Washington City in getting orders for said surveys, and in getting the same received and approved by the proper officers, and to make many compromises, arrangements, and adjustments with said persons holding adversely as aforesaid; and whereas the said party of the second part is willing to run all risks and bear all necessary expenses in obtaining said portion of said common for one-half in fee-simple of all that can be obtained by suit, compromise, or otherwise:

Therefore, in consideration of the premises, it is agreed between said party of the first part and said party of the second part as follows, to wit: First. The said party of the second part is to dispossess all persons holding adversely as aforesaid, if the same can be lawfully done. Second. The said party of the second part is to bear all necessary expense in obtaining said portion of said common by suit, compromise, or otherwise. Third. The said party of the first part is to convey in fee-simple to said party of the second part, at such time or times as he may appoint, one undivided half of such portion or portions of said common as he can obtain by suit, compromise, or otherwise; but no compromise is to be made without the approbation and consent of the city counsel of said city.

Fourth. The said party of the second part is to use all reasonable exertions to fulfil his part of this agreement; and, fifth, the said party of the second part, in carrying into execution this agreement, shall have the right and privilege of using the name of "The City of Carondelet" in all suits, actions, and proceedings in all courts and elsewhere.

308 In testimony whereof the parties aforesaid have executed this

agreement in duplicates, the mayor of said city signing his name, and the register of said corporation, under the corporate seal of said city, attesting both parts, and the said party of the second part signing his name and affixing his seal to both parts of this instrument, on the day and year first aforesaid, at said city.

JAMES B. WALSH, *Mayor.* [SEAL.]
ANTHONY H. MENKENS. [SEAL.]
[SEAL.] Attest: BERNARD POEPPING, *Register.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this fourth day of October, in the year of our Lord eighteen hundred and fifty-one, before me, the undersigned, a justice of the peace within and for the county and State aforesaid, came James B. Walsh, mayor of the city of Carondelet, and Anthony H. Menkins, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

Filed and recorded October 6th, 1851.

S. D. BARLOW,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss:

The undersigned, recorder in and for said county, certify the foregoing is a full and complete copy of an instrument of writing and of the certificate of acknowledgment, as also of the date of filing and recording, as fully as the same remains of record in my office in Book C, No. 6, page 232 and foll'g.

Witness my hand and official seal this 18th day of October, 1851.

[SEAL.] S. D. BARLOW.

Bill of exceptions.

The defendants offer the claim of St. Louis to commons of the village of St. Louis, with all the regulations of the syndics of St. Louis and lieutenant-governor of Upper Louisiana, and the proceedings of the old board of 10th of May, 1806, the evidence of witnesses before the old board, decisions of the old board 14th June, 1806, proceedings read,
and the survey of Zeno Mackey of 1806; to the admission of
309 which, and each of which, the plaintiff then and there objected as
being incompetent, irrelevant, not authorized by any act of Congress, not certified according to any law, and that the survey of Mackay and the evidence of witnesses before the old board is incompetent and irrelevant and were hearsay; but the court admitted the same to be read to the jury as follows:

Claim of St. Louis to common and regul'n of the syndics, &c.—Claim.

The inhabitants of St. Louis claim 4,293 arpens of land, situate joining the town of St. Louis, known by the name of the common of St. Louis, granted by a decree of the lieutenant-governor, Francis Cruzat, the 22d of September, 1782.

Decree.

Nous soussignes sindics nommes par l'assemblee des inhabitants qui a ete faite en la chambre du gouvernement le 22 du mois de September de cette annee 1782 par Monsieur Don Franco. Cruzat, lieutenant-colonel gradue d'infanterie, commandant en chef et lieutenant-governor de la partie occidentale et districts des Illinois pour etablir des regles fixes et inalterables pour la construction et entretien des rues; ponts et canaux de ce village. Munis de l'autorite du public qui nous a elus a ces fins nous avons determine en la dette chambre du gouvernement et en presence du sus dit Mr. D. F. Cruzat; aujourd'hui, 29 du meme mois ce qui suit et a quoi ou se conformera regulierement a l'avenir.

1°. Il sera fait le premier jour de chaque anne en la chambre du gouvernement et en presence de Mons. le lieutenant-gouverneur une assemblee des tour les habitants de ce poste, dans laquelle ou nommera a la pluralite des voix, deux sindics pour veller unanimement a l'entretien des rues, ponts & canaux de ce village lequels seront obliges de faire observer et remplir exactement les articles suivants.

2°. Le premier devoir des sindics aussit dit leur election dont etre d'examiner par eux, memes le local exterieur du village et de faire reparer dans, delai les rues, canaux et ponts, par les personnes qui y sont obligees et que nous indiguous plus bas, et si quelqu'un refusait de s'y conformer, ils auront a la justice pour les obliger a remplir un object si indispensable pour la commodite public.

3°. Tous les habitants qui font face a une rue, par laquelle passera un ruisseau, seront obliges a donner un cours a l'eau jusqu'au Mississippi, a faire les canaux et ponts nessaires a les entretenir et a mettre en tout temps la practicable des charrois & voitures publico.

4°. Hors les cas expliques les articles ci-dessus, les rues en general seront muomodies et entretenues en bor etat par les proprietaires des tarrains qui y feront face; bien entender que les viz-a-vis y co aperont par egal portion si le cas l'exige.

310 5o. Enfin le pont de la petite riviere ainsi que tous les chemins qui sont hors du village seront faits et entretenus par le public.

Fait et passe en la salle du gouvernement et en presence de Mons. le lieutenant-gouverneur qui a signe avec nous le dit jour et au que ut supra.

PERRAULT.
BRAZEAU.
CERRE.
RENE RIERSERAUX.
marque ordinaire
JOSEPH + TAYON,
du senir.
marque ordinaire
JOSEPH + MAINVILLE.
de senir.
AUGUSTE CHOUTEAU.
CHAUVIN.
FRAN'CO CRUZAT.

Nous soussignes sindics nommes pas l'assemblee des habitants qui a ete faite en la chambre du gouvernement le 22 du mois de September de cette annee 1782, par Mons. Don Fran'co Cruzat, lieutenant-colonel gradue d'infanterie, commandant en chef et lieutenant-gouverneur de la partie occidentale et districts des Illinois, pour etablir des regles fixes et inalterables pour la construction et entretien des clotures de la commune de ce village, munis de l'autorite du public qui nous a elus a ces fins

nous avons determine en la dite chambre du gouvernement et presence du sus dit Mr. D. Fran'co Cruzat aujourd'hui, 29 du meme mois qui suit et a quoi au se conformera regulierement a l'avenir.

1°. Le premier jour de chaque annee ou nomera publiquement dans la chambre du gouvernement en presence de Mons. le lieutenant-gouverneur un sindic, et immediatement apres huit arbitres qui feront la premiere visite des clotures de la commune.

2°. Les clotures de la dite commune seront faites et parfaites tous les ans pour le 15 d'Avril au plus tard, esteront re mes le premier demande apres ce quantieme par les huit arbitres nommes.

3°. Les sus dits arbitres ne pourront recevoir les clotures sans quelles soient construites de maniere que les animaux ne puissent sortir de la commune, pour faire du digat dans les semences des habitants.

4°. Il sera du devoir des dits huit arbitres de vendre compte au sindic de la visite qu'ils auront faites des clotures, lequel tant aussitat en nomera huit autres pour verifier l'exactitude ou la negligence des premieres, et sil setrouvait de clotures qu'ne fussent pas dans l'etat requis pour etre recues et que les premiers arbitres n'en eussent pas fait leur rapport au dit sindic, ils seront candammes a payer chacun une amende de dix livres.

311 5°. Lorsqu'il parviendra a la connaissance du sindic que quelque cloture n'est pas dans l'etat d'ecrit dans le troisieme article de ce reglement, il sera de son devoir d'encevertir le proprietaire, pour que sans delai il y apporte le remede convenable, et si ce-dernier par caprice au autrement n'egligerait ce juste devoir, le sindic la fera raccommoder a ses depens.

6°. Si le dernier qui aura fait la visite des clotures si avertissait pas le sindic de l'etat dans lequel il les aura trouvees et que dans l'intervalle de sa visite a celle qui doit se faire apres, il se trouvat que les animaux fassent sortis, et qu'ils eussent fait quelque dommage, il sera contraint a le payer, et s'il arrivait que le sindic ayant ete prevenue du marvais etat des clotures, ont neglige d'en avertir les proprietaires, alors il sera responsible du degat et contraint a le payer lui-meme egalement dans le sas au les proprietaires des clotures auraient ete avertis par le sindic d'aller les racomoder et qu'ils ne l'eussent pas fait dans l'instant, ils subiront la meme peine.

7°. S'il arrivait dans le temps que les animaux seraient sortiret, qu'ils auraient fait du diegrat que plusieurs clotures seraient defectuenses, pour remedier aux suites facheuses qui resultent ordinairement de pareils faits, il est statue que les dommages seront pages par egale portion par ceux dont les clotures seront mauvaises, cepandant s'il survenait que dans l'espace d'une visite a l'autre, les clotures ayant ete trouvees en bon etat par le sindic au par les personnes preposees a cet effet, que les animaux eassent pas se par quelque breeche fait par des malfaiteurs inconnus ou par quelque autre evenement inattender, le dommage qui s'enmiora restera pour celui a qui il aura ete fait.

8°. Si les animaux qui seront mis en liberte venaient a etre pris dans les champs sans que les proprietaire eussent co-opere a leur sortie, ils ne seront tenus n'y a en payer, la prise ni le dommage, suppose qu'il y en eut.

9°. Lorsqu'il sera prouve que le gardien de barriere y aura laisse passe des animaux de quelque espece qu'ils puissent etre par sa negligence au autrement, il sera contraient a payer le tort qui aura ete fait.

10°. Aussitat que les clotures seront reques il ne sera permis a qui que ce puisse etre de prasser par dessus, sous peine de payer pour la premiere fais une amende de dix livres, et pour la seconde une d'vingt quatre, et d'etre punis de vingt quatre heures de prison.

11°. Les malfaiteurs surpris a faire breche dans le clotures soit pour passer eux-memes au pour faire passer des animaux, n'importe quelque soit le motif seront condamnes a payer en autre du dommage qu'ils auront causes 50 livres d'amende et subiront 50 jours de prison.

12°. Il est ordanre a tous ceux qui trouveront quelqu'un a
312 commettre le delit especific dans l'article precedent, d'en donner le plus prompt avis a Mons. le lieutenant gouverneur et de condaive lui-meme le criminel en prison s'il lui est possible de l'arriter. Mais si quelque personne par nine indulgence mal entendure au par un interet particulier ne remplissait pas exactement ce devoir, et qu'il fut prouve, qu'il aurait dit a d'autres personnes d'avoir surpris quelqu'un dans ce cas, il sera reputé complice du crime et condamne a payer la meme amende et dommage et a subir la punition ci-dessus portee.

13°. Les proprietaires de chaque cloture seront obliges d'y mettre une étampe avec leur nom en entier sous peine de quinze livres d'amende.

14°. Celui qui prendra un cheval attaché dans la prairie pour seu servir sans l'aveu du maitre sera convamne a payer 25 livres d'amende, et puni de 24 heures de prison, et s'il survenait quelque accident facheux au cheval, il le payera suivant l'appreciation qui ou sera fait.

15°. Si des chevaux au animaux attachés dans la prairie, cossant leur corde venaient a étre pris dans les champs, celui qui les arretera fera payer pour chaque tete cinq livres, ette proprietaire de la terre sur laquelle ils seront pris exigera le payment du dommage qui sera estime par des arbitres.

16°. Lorsqu'il sera prouvé que quelqu'un aura pris la corde d'un animal attaché dans la prairie il la payera dix livres sa's prejudice de 5 livres pour la prise et des dommages qu'il aura occasionés suivant l'estimation arbitral qui en sera faite.

17°. Il ne sera permis a qui que ce puisse étre d'attacher des chevaux au autres animaux sur la terre d'autrui sans son propre consentement s'il en etait autrement le maitre de la terre se saisira des animaux et exigera de celui a'qui ils appartiendront 5 livres par tete, et sera en droit de reclamer le dommage, suppose qu'ils en aient fait.

18°. Quand ou trouvera des esclaves a enfreindre quelqu'un des articles ci-dessus, leurs maitres payeront les amendes prises et dommages prescrito, et les sus dits esclaves seront prinis par le fouit selon l'exigence des cas.

19°. Toutes les amendes seront deposées entre les mains en sindic determine par Mon. le lieutenant gouverneur des deux qui seront nommees annuellement pour la police et entretien du village et elles seront reversibles aux travaux publics de la communante.

Fait et passee en la salle du gouvernement en presence du sus
313 dit lieutenant gouverneur, qui a signé avec nous le meme jour et au que ut supra.

PERRAULT.
CERRE.
BRAZEAU.
RENÉ RIERCERAUX,
marque
De Mr. TH. + TAILLON.
ordinaire.
marque ordinaire
JOSEPH + MAINVILLE.
de mons.
CHAUVIN.
AUGUSTE CHOUTEAU.
FRAN'CO CRUZAT.

See book B, p. 486, 487, and 488.

Translation.

We, the undersigned, syndics named by the meeting of the inhabitants holden in the government chamber, the 22d of the month of September of this year 1782, by Mr. Don Francis Cruzat, lieutenant-colonel grad' of infantry, commander-in-chief, and lieutenant-governor of the western part and districts of the Illinois, to establish fixed and unalterable rules for the construction and maintenance of the streets, bridges and canals of this village, clothed with the authority of the public, which have selected us for these ends, have determined in the said government chamber, and in the presence of the aforesaid Mr. D. F. Cruzat, this day, the 29th of the same month, the following, which is to be regularly conformed to in future:

1. There shall be held, the first day of every year, in the government chamber, and in the presence of Monsieur the lieutenant-governor, a meeting of the inhabitants of this post, wherein, by plurality of voices, there shall be named two syndics, who shall together (unanimously) superintend the maintenance of the streets, bridges, and canals of the village, and who shall be obliged to cause to be observed and fulfilled strictly the following articles:

2°. The first duty of the syndics immediately after their election shall be to examine for themselves the interior locality of the village, and to cause without delay the streets, canals, and bridges to be repaired by the persons who are bound so to do, and whom we indicate below; and that if any one refuses to conform thereto, they have recourse to law to compel them to fulfil an object so indispensable for the public convenience.

3°. All the inhabitants fronting upon a street along which a run (streamlet) shall pass shall be obliged to give course to the water to the Mississippi, to make the canals and bridges necessary to maintain
314 them, and keep the streets at all times practicable for the convenience of carriages and public cars.

4°. Besides the specifications in the aforegoing articles, the streets in general shall be repaired and maintained in good condition by the proprietors of the ground fronting on them, it being understood that those opposite to each other shall co-operate in equal portions, if the case required it.

5°. Finally, the Little River bridge, as well as all the roads which are outside of the village, shall be made [and] maintained by the public.

Done and passed in the government hall, and in the presence of Monsieur the lieutenant-governor, who has signed with us the said day and year ut supra.

PERRAULT.
BRAZEAU.
CERRE.
RENE KIERCERAUX.
AUGUSTE CHOUTEAU.
CHAUVIN.
Ordinary mark of JOSEPH + TAILLON.
" " JOSEPH + MOINVILLE.
(Signed) FRANCIS CRUZAT.

We, the undersigned, syndics named by the meeting of the inhabitants which was holden in the government chamber, the 22d of the month of September of this year 1782, by Monsieur Don Francis Cruzat,

lieutenant-colonel *grad*^{t} of infant'y, commander-in-chief and lieutenant-governor of the western part and districts of the Illinois, to establish fixed and unalterable rules for the construction and maintenance of the enclosures of the commons of this village, clothed with the authority which elected us for these ends, have determined in the said government chamber, and in the presence of the aforesaid Mr. Don Francis Cruzat, this day, the 29th of the same month, the following, whereunto conformity for the future shall be regularly observed:

1. The first day of every year there shall be named publicly in the government chamber, in the presence of Monsieur the lieutenant-governor, a syndic, and immediately after eight arbiters, who shall make the first examination of the enclosures of the common.

2. The enclosures of the said commons shall be made and completed every year by the 15th of April, at the latest, and shall be accepted by the eight arbiters the first Sunday after the fourth.

3. The aforesaid arbiters shall not accept the enclosures unless they be constructed in such manner that the animals cannot escape from the common and do damage to the seedings of the inhabitants.

315 4. It shall be the duty of the said arbiters to render an account of the examination of the enclosures which they shall have made to the syndic, who thereupon shall immediately nominate eight others to verify the exactness or negligence of the first. And if there shall be found enclosures which are not in the condition required to be accepted, and the first arbiters shall not have made their report thereof to the syndic, they shall be condemned to pay each a fine of ten pounds.

5. Whensoever it shall come to the knowledge of the syndic that any enclosure is not in the state decreed by the third article of this ordinance, it shall be his duty to give notice thereof to the proprietor, in order that, without delay, he may apply to it the proper remedy; and if the latter shall, through caprice or otherwise, neglect this first duty, the syndic shall cause it to be repaired at his cost.

6. If the last who shall have made the visit of examination to the enclosure shall not have given notice to the syndic of the condition in which he should have found them, and if, in the interval between his visit and that which is subsequently to be made, it shall be proved that the animals have escaped, and that they have done any damage, he shall be forced to pay for it; and if it happen that the syndic, having been warned of the bad condition of the enclosures, shall have neglected to give notice thereof to the proprietors, then he shall be responsible for the damage, and be constrained to pay it himself.

In like manner, in the case of the proprietors of the enclosures having been notified by the syndic to go and repair them, and their failure to do so immediately, they shall undergo the same penalty.

7. If it happen that at any time when the animals shall have escaped and shall have done damage that several enclosures are defective, in order to remedy the vexatious consequences which usually result from similar facts, it is ordered that the damage be paid in equal portions by those whose enclosures are defective.

Nevertheless, if it should occur that in the interval between one visit and another, the enclosures having been found in good condition by the syndic or other persons appointed for that purpose, the animals shall have escaped through any breach made by unknown malefactors, or from any other unexpected event, the damage following thereupon shall rest upon him when it has fallen.

8. If the animals which shall be turned loose come to be taken up in the fields without the owners having co-operated in their egress, they

shall not be held to pay either the caption or the supposed damage which they may have occasioned.

9. Whensoever it shall be proven that the gate-keeper shall have allowed animals of any sort whatever to escape, by his negli-
316 gence or otherwise, he shall be forced to pay the damage which may be done.

10. As soon as the enclosures shall have been accepted, it shall not be permitted to any person whatsoever to pass over them, upon pain of paying for the first offense ten pounds, and for the second twenty-four, and suffer an imprisonment of twenty-four hours.

11. Malefactors surprised in making a breach in the enclosures, whether to pass themselves or to allow the animals to pass, whatsoever be the motive, shall be condemned to pay, besides the damages they may have caused, a fine of fifty pounds, and to undergo an imprisonment of fifteen days.

12. It is ordered that all those who may find any one committing the crime specified in the preceding article shall give the promptest advice thereof to Monsieur the lieutenant-governor, and shall themselves conduct the criminal to prison, if it be possible for them to arrest him; but if any one, through a mistaken indulgence or any private interest, shall not strictly fulfil his duty, and if it shall be proven that he has stated to other persons that he has surprised any one, in such case he shall be reputed an accomplice in the crime, and condemned to pay the same fine and damages and undergo the same privation as hereinbefore provided.

13. The proprietors of each enclosure shall be obliged to place thereupon a stamp, with their name in full, under penalty of fifteen pounds fine.

14. He who takes a horse in the prairie, to make use of him, without the consent of the master, shall be condemned to pay twenty-five pounds fine, and punished with twenty-four hours' imprisonment; and if any unlucky accident shall befall the horse, he shall pay therefor according to the estimate which shall be made thereof.

15. If horses or animals tied in the prairies break their ropes and come to be taken up in the fields, he who takes them up shall receive five pounds her head; and the proprietor of the land whereon they are so taken shall demand the damages which shall be assessed to him by the arbiters.

16. Whensoever it shall be proven that any one has taken the rope off an animal fastened in the prairie, he shall pay ten pounds therefor, without prejudice to the five pounds for the taking, and the damages which he shall have occasioned according to the estimate of the arbiters which shall be made thereof.

17. It shall not be permitted to any person whatever to tie horses or other animals upon the lands of others without their consent; otherwise the owner of the land shall seize the animals, and exact of him to whom they belong five pounds per head, and shall have the right to claim the supposed damages which they may have done.

18. Whensoever any slaves shall be found to have violated any
317 of the foregoing articles, their masters shall pay the fines, costs of taking up, and damages prescribed; and the aforesaid slaves shall be punished with the lash, according to the exigency of the case.

19. All the fines shall be deposited in the hands of the syndic designated by the lieutenant-governor of the two who shall be annually named for the police and maintenance of the village, and they shall be convertible to the public works of the community.

Done and passed in the government hall, in the presence of the afore said lieutenant-governor, who has signed with us the same day and year ut supra.

(Signed) PERRAULT.
CERRE.
RENE KIERCERAUX.
BRAZEAUX.
Ordinary mark of JH. + TAILLON.
JH. + MOINVILLE.
CHAUVIN.
AUGUSTE CHOUTEAU.
FRANC. CRUZAT.

Proceed's of the old board, &c.

MAY 10TH, 1806.

The board met agreeably to adjournment. Hon. Clement B. Penrose, esq.

The inhabitants of the town of St. Louis, claiming 4,293 arpens of land-commons, produce a certificate of survey of the same, dated 22d February, 1806; a set of regulations of the inhabitants having for object the keeping in order or repairing of the enclosure of said commons, and imposing penalties on such as should neglect or refuse to repair the same; said regulations signed by the Lieutenant-Governor Cruzat, and dated 22d September, 1872.

Auguste Chouteau, being duly sworn, says that the inhabitants never had a concession for said commons; that he has always known it was such, although of much smaller extent at first; that it was first fenced in the year 1764, at the expense of the inhabitants, who always kept it in repair; and further, that every person, inhabitant of the village, was in the habit of pasturing his cattle in the same, and of cutting wood; and further, that he has known the said commons as surveyed, fenced, for upwards of fifteen years hence.

Gregoire Sarpy, being duly sworn, says that he arrived in the country about 10 or 20 years ago; that he has always known said commons as such; that the same had then acquired its present size; that when
318 he arrived he found the *fenced in*, [fence down?] and that every inhabitant was obliged, under certain penalties, to attend to and make such repairs as the said enclosure of fences required; and further, that Sylvester Labadie, having in the year 1792 obtained a concession for lands forming part of said commons, and having in consequence thereof begun his improvement of the same, the inhabitants remonstrated against it to the lt. governor, who prevented him from cultivating the same until such time as the intendant should have decreed otherwise.

William H. Lecompte, being also sworn, says that he has been an inhabitant of the country for upwards of 44 years; he has known the commons from his first arrival in it; that the said commons has increased in proportion to the population of the village; that he has known it of the size it now is for upwards of ten years; that the old commons is included in the present one, and that the regulations passed upon the same were always considered as laws, and enforced as such; and further, that other regulations were had respecting the same, and also put in force.

The board reject this claim for want of actual inhabitation and cultivation and a duly registered warrant of survey. Carried to page 311, for remarks of the board.)

Adjourned till 3 o'clock p. m.

See minutes of the old board, No. 1, pages 288, 289, 290, and 291.

JUNE 14TH, 1806.

The board met agreeably to adjournment.

Present, the honorable John B. C. Lucas, B. Penrose, and James L. Donaldson, esqs.

In the case of the commons of St. Louis, pages 289 and 290.

The board remarked that this claim originated under the French government; that grants of commons were usual under the French and Spanish governments, and in conformity with their respective laws.

They deem it to be equitable under Spanish laws.

On motion, adjourned to Monday, the 16 inst., 9 o'clock a. m.

See book No. 1 of minutes of old board, pages 310, 311, and 312.

THURSDAY, *January 2d*, 1812.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Inhabitants of the town of St. Louis, claiming 4,293 arpens of land as a common. See book No. 1, pages 289 and 311.

It is the opinion of a majority of the board that this claim ought not to be granted.

Clement B. Penrose, commissioner, voting for a confirmation
319 thereof, under the usages and customs of the Spanish government.

Board adjourned till Monday next, 9 o'clock a. m.

JOHN B. C. LUCAS.
FREDERICK BATES.
CLEMENT B. PENROSE.

See book No. 5 of minutes of old board, pages 551, 552, & 553.

Survey of James Mackay, 1806.

Commons of St. Louis, containing in all 4,293 arpens, including six claims besides Madam Dubreuille's, which is not surveyed.

August Chouteau, 60 arpens.

(For plat see original, page 68.)

I do certify that the above plat represents four thousand two hundred and ninety-three arpens of land, situated in the town of St. Louis, and surveyed by me at the request of the inhabitants of said St. Louis, who claim the same as their right in common, and at whose request I have included in the said commons seven different pretensions of different individuals, as appear on the above plat, besides those which are unknown to me and not surveyed.

Given under my hand at St. Louis the 22d day of February, 1806.

JAMES MACKAY.

Received for record, St. Louis, 27th February, 1806.

ANTOINE SOULARD,
Sur. Gen'l Ter'y Louisiana.

See original plat on file, and its record, at page 488 of book B.

Bill of exceptions.

To the admission of all the foregoing proceedings and the documentary evidence and survey the plaintiff then and there excepted and objected.

Survey of Jos. C. Brown, of 13th May, 1833, No. 3125, of St. Louis com's.

The defendant then offered the survey of Jos. C. Brown, of 13th May, 1832, No. 3125, of St. Louis commons, to which the plaintiff then and there objected, that the survey was not made pursuant to any instructions of the Commissioner of the General Land-Office, nor in pursuance of any act of Congress or instructions from any department of the Government of the United States authorized to give instructions in that behalf; but the court admitted the said survey in evidence, to which the plaintiff then and there excepted.

320 The same was read to the jury as follows:

Plat and survey of the land claimed by the inhabitants of the city of St. Louis, as commons, surveyed under contract with and instructions from the surveyor of public lands in the States of Illinois and Missouri, dated surveyor's office, St. Louis, November, 1832.

(For plat see original, page 70.)

Begin at a stone, which is a corner of this survey, and also a corner of Auguste Chouteau's survey No. 363, set of old by Spanish authority; thence along said Chouteau's line, which is the northern boundary of this survey, N. 75° 10′ W.; at the distance of 17 chains 70 links from the beginning is a stone 10 links on the left; at 32 chains 67 links a stone in the line; at 43 chains 70 links intersect a branch 6 links wide; at 44 chains 92 links left said branch bearing northwardly, having out a short bend of it; at 46 chains 70 links intersect Chouteau's mill-pond, bearing northeastward; at 50 chains 50 links left said pond; at 62 chains 78 links is a stone; at 92 chains 42 links a stone; at 101 chains 36 links intersect a creek of the pond, 20 links wide, and bears southeastward; at 106 chains 81 links intersect a spring-branch 4 links wide, bearing northward; at 107 chains 11 links a stone; at 151 chains 37 links a stone; at 166 chains 22 links a stone; at 175 chains set a post in said line for a corner of this survey, which is 5 chains 90 links eastward of the southwest corner of Chouteau's said survey, from which a cherry 4 inches diameter bears N. 76° W., 350 links distant (and is 25 links southward of a large spring,) and a pin-oak 4 inches in diameter bears N. 66 30′ W., 324 links distant; thence along the western boundary of this survey S. 0° 42′ E.; at 28 chains 57 links intersect a line of James Y. O. Carrel's survey, No. 2498, where set a post, 95 chains 18 links eastward of his corner stone in Gratiot's line; from said post a red oak 3 inches in diameter bears N. 52° E., 94 links distant, and a red oak 4 inches in diameter bears N. 63¾° W., 90 links distant.

Thence measured along the said western boundary of this survey to a corner of Charles Sanguinette's survey, No. 2043, which is also a corner of this survey, the whole length of this line being 162 chains 71 links; said corner is a post, from which a red oak 15 inches in diameter bears S. 59° E., 97 links distant; and the northwest corner of the chimney to a dwelling-house bears S. 46½° E., 156 links distant; thence along one of said Sangui-

nette's line, which is a line of this survey, S. 82° 45′ E., 9 chains and 5 links, where set a post as corner to this survey and Sanguinette's survey, the old corner not being found, from which a pin-oak 10 inches in diameter bears N. 11° 30′ E., 201 links distant; thence along an
321 old line of Sanguinette's survey and of this survey S. 7° 15 W., (crossing a spring-branch, running eastward about midway this line,) 9 chains to the old corner of this survey, a post and stone, from which a pin-oak 8 inches in diameter bears N. 13° W., 136 links distant, and a pin-oak 10 inches in diameter bears S. 88° W., 13 links distant; thence N. 82° 45′ W., along an old line of said Sanguinette's survey, which is a line of this survey, 9 chains and 5 links, set a corner post, from which a pin-oak 12 inches in diameter bears S. 67° E., 67 links distant, and a sassafras 6 inches in diameter bears S. 12° E., 65 links distant; thence along another of said Sanguinett's lines, being also a line of this survey, S. 7° 15′ W. 23 chains 14 links to an old stone, corner of said Sanguinette's, and of this survey; thence along the east end of other field-lots S. 7° W. 37 chains 70 links, a stone set of old, as the southeast corner of a survey of Charles Sanguinette's claim under J. B. Tesson, being a corner of this survey; thence along a new line, as called for in this survey, 33 chains 25 links, set post for a corner, from which a black oak 5 inches in diameter bears N. 12° W., 15 links distant, and a hickory 4 inches in diameter bears N. 68° W., 2 links distant; thence S. 8° W., along another new line, as called for in this survey, 55 chains 35 links, set a post for corner, from which a red oak 6 inches in diameter bears N. 30½ E., 219 links distant, and a red oak 9 inches in diameter bears N. 18¼° E., 232 links distant; thence east along a new line, which is the south boundary of this survey, 49 chains 27 links, set a post on the bank of the river, the southeast corner of this survey, from which an elm 10 inches in diameter bears N. 31° E., 15 links distant, and a sycamore 6 inches in diameter bears S. 18¾° E., 55 links distant; from this line, measured at right-angles northward, the southeast corner of a stone house, near the shot-tower on the river-bluff, is distant 6 chains 13 links, and the centre of the shot-tower is distant 5 chains 22 links; from said S. E. corner meander up the river between high and low water mark N. 30° 20′ E. 36 chains; thence N. 49° E. 12 chains 50 links; thence N. 35° E. 18 chains, set a post on the bank of the river, a corner of this survey, from which a plum-tree 3 inches in diameter bears N. 20° E., 75 links distant, and a walnut 3 inches in diameter bears N. 17° W., 45 links distant; thence along a new line N. 30° 45′ E. to a point called for in a line of August Chouteau's said survey, as a corner of this survey; at 42 chains 67 links his line, which is the eastern boundary of this survey, intersects the township line, where set a good hammered stone for corner to fractional section 3 and 34, in township 44 and 45 north, and range 7 east; 17 chains 52 links west of the corner to said fractional section, set in the southern line of Susan Dubreuil's survey, No. 374; at 56 chains 94 links intersect the south boundary-line of Susan Dubreuil's said survey, where set a post, 19
322 chains 30 links westward of her corner on the bank of the river, from which post a white oak 3 inches in diameter bears S. 75° W. 34 links, and a white oak 3 inches in diameter bears N. 5° E., 14 links distant; at 69 chains 17 links intersect the western boundary of said Susan's survey, where set a post, 46 links southward of her N. W. corner-stone, from which a white oak 4 inches in diameter bears S. 10° W., 80 links distant; at 164 ch's 40 links intersect the southern boundary-line of Madam Chouteau's survey, No. 1827, where set a post, 12 chains 21 links westward of her S. E. corner, from which a mulberry 3 inches in

diameter bears S. 13° 45′ W., 44½ links distant, and a plum 3 inches in diameter bears S. 21 W., 44 links distant; at 176 chains 12 links intersect the northern line of said survey, and set a post there, 11 chains 41 links westward of her N. E. corner, from which a pecan 3 inches in diameter bears S. 54° E., 33 links distant, and a locust 4 inches in diameter bears N. 44° E., 107 links distant; at 177 chains 20 links intersect the south line of A. Soulard's survey No. , where set a post, 10 chains and 63 links wes'ward of his S. E. corner, from which post a locust 4 inches diameter bears S. 53° E., 26 links distant, and a locust 5 inches in diameter bears N. 18° W., 108 links distant; at 218 chains 45 links intersect the line between James Mackay's and A. Soulard's surveys, and set post there, 14 chains and 40 links westward of his N. E. corner of said survey, and 15 chains 70 links westward of the N. W. corner of his survey, in the name of Gabriel Cerre, from which post a black oak 4 inches in diameter bears N. 7° 31′ E., 28 links distant, and a black oak 3 inches in diameter bears S. 72° W., 6½ links distant; at 233 chains 34 links (which is the whole length of this line) intersect August Chouteau's line, and there set post for a corner of this survey, 8 chains 65 links westward of his corner, near the convent, from which post a pin-oak 4 inches in diameter bears N. 5° W., 11 links distant, and a pin-oak 4 inches in diameter bears S. 36° 30′ W., 34 links distant; thence along Chouteau's said line, being a line of this survey, N. 75° W. 32 chains 9 links, to an old stone, corner to said Chouteau's survey, which is a corner of this survey; thence N. 14° E. 12 chains 3 links, along a line of Chouteau's said survey, being a line of this survey, to the beginning; which said survey of the commons claimed as aforesaid contains 3,837.03 acres, equal to 4510.43 arpens.

May 13th, 1833.

JOS. C. BROWN, *D. S.*

OFFICE OF THE SURVEYOR-GENERAL,
St. Louis, June 4th, 1850.

I certify that the foregoing plat and description of survey No. 3125 are correctly copied from pages 74, 75, and 76 of book C, in this office.

M. LEWIS CLARK,
Surveyor-General.

323 OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI,
St. Louis, Dec. 16th, 1857.

I certify that the foregoing plat and description of approved survey No. 3,125 are correctly copied from pages 74, 75, and 76, of record-book C, on file in this office.

JOHN LOUGHBOROUGH,
Surveyor-General.

Bill of exceptions.

The defendant then offered the plat of survey of fractional section 9, of township 44 N., of R. 6 east of the 5th principal meridian; to which the plaintiff then and there objected, that the same was not made as an actual survey, but was constructed without any authority of law, and within the out-boundary of the commons of Carondelet; but the court admitted the same as evidence to the jury; to which the plaintiff then and there excepted, and the said plat was read to the jury as follows:

Survey of fract'l sect. 9, township No. 44 north of the base-line, range No. 7 east of the 5th p'l meridian.

(For plat see original, page 74.)

Field-notes of the survey of the most southern boundary of the commons of St. Louis.

The southeast corner of the commons of St. Louis is a post on the bank of the river, from which an elm 10 inches in diameter bears N. 31° E., 15 links distant, and a sycamore 6 inches in diameter bears S. 18¾° E., 55 links distant; from this post the temporary post set at the end of the random line, 48 links north of the shot-tower, as described on page 10, (of the original field-book,) bears N. 17° W.; thence west along a new line, run as the south boundary of this survey, (which line is 6 chains 13 links south of the S. E. corner of a stone dwelling-house, near the shot-tower on the bluff, and is 5 chains 22 links south the centre of said shot-tower, and is 22 links south of a line run as the south boundary, but which was discovered to be not in its right place,) 49.27, [chains,] set a post for S. W. corner of this survey, from which the temporary post, described on page 9, (of the original field-book,) bears 8° E., 5 ch's 76 links distant, making the whole length of that line to be S. 8° W., 55 chains 35 links; from said S. W. corner-post a red oak 6 inches in diameter bears N. 30½° E., 219 links distant, and a red oak 9 inches in diameter bears N. 18¼ E., 232 links distant.

May 8th, 1833.

JOSEPH C. BROWN, *D. S.*

324 (See volume 36, p's 164, 165, and 166, of field-notes of private surveys in Missouri.)

Field-notes of the survey of the most northern boundary of the commons of Carondelet.

The N. W. corner of the common of Carondelet, is a stone set in the east boundary-line of the (Carondelet) common fields, 70 links northward of a stone, the S. E. corner of a tract of 1½ arpent front, said formerly to have belonged to J. B. Gamache, and now to Thom's Chrautrand.

The stone here set by me is 18 inches long, 4 inches thick, and 12 inches broad, set 9 inches deep, edge east, the N. W. corner of the common of Carondelet.

For connection of the common of Carondelet with the common of St. Louis, measured from the N. W. corner-stone of the common of Carondelet, N. 14° 40′ E. along the front line of the common fields 3.66 chains, a stone corner appears to have been reset, being in a path, 5 chains 72 links, intersect the south boundary-line of the common of St. Louis 4 chains 34 links east of the S. W. corner of St. Louis common, according to a late survey thereof by me.

From the N. W. corner of the common of Carondelet S. 82° E. along a new line, the north boundary of common of Carondelet, 35.00 chains; the middle of the road leading from Carondelet to St. Louis, 40.00, just east the precipice of stone on river Mississippi; 41.35, set post just at ordinary high water, for N. E. corner of the common of Carondelet, from which a sycamore 10 inches in diameter bears S. 12° E. 24 links, and an elm 11 inches in diameter bears N. 46° E., 38 links distant; thence for connection with the S. E. corner of the common of St. Louis, S. 50° E.

78 links; thence N. 25° 15′ E. 11 chains 90 links, to the S. E. corner of St. Louis common.

March, 1834.

JOS. C. BROWN.

(See volume 29, pages 134, 135, 136, and 137, of the field-notes of private surveys in Missouri.)

OFFICE OF THE SURVEYOR-GENERAL FOR
ILLINOIS AND MISSOURI,
St. Louis, January 9th, 1854.

I certify that the foregoing plat of fractional section 9, township 44 north, range 7 east of the 5th principal meridian, and its connections with the adjoining surveys, is correctly copied from the plat of said township on file in this off'ce; also that the foregoing field-notes of the survey of the most southern boundary-line of the common of St. Louis, and of the survey of the most northern line of the common of Carondelet, according to which it appears said fractional section 9 has been constructed and laid down on said township-plat, are correctly abstracted from the books and pages above referred to, on file in this office.

325

JOHN LOUGHBOROUGH,
Surveyor-General.

Bill of exceptions.—Ord. No. 307 *of the city of St. Louis.*

Ordinance No. 307, (p. 218, Rev. Ordinances of 1856,) of the city of St. Louis, 26th January, 1856, offered by the defendants, and objected to by plaintiff, but admitted by the court only to show the claim of St. Louis to the land. The same was read as follows:

(No. 307.)

An ordinance for the sale of the St. Louis commons.

Be it ordained by the mayor and board of aldermen of the city of St. Louis:

Section 1. That the commons of St. Louis be sold to the highest bidder, according to the act of the general assembly in relation thereto.

Sec. 2. The sale shall commence on the first Monday in March, one thousand eight hundred and thirty-six, and be continued at such times and places as shall from time to time be fixed by the committee of aldermen on the commons.

Sec. 3. The said committee shall have power, in all cases not *not* otherwise directed by law, to make such arrangements, give such notices, appoint such order of sale, and make such reservations from sale as they may deem most proper, and may, in their discretion, postpone the appointed day of sale, giving lawful notice of such other or adjourned day of sale.

Approved 26th January, 1836.

Bill of exceptions.—Ord. No. 315 *of the city of St. Louis.*

Act of 18th March, 1835, of Missouri legislature, read to the jury.

This act may be read by consent, from the session acts of 1835, without being copied.

Ordinance of 25th March, 1836, page 219, No. 315, read to show the claim of St. Louis to the land, as follows:

(No. 315.)

An ordinance concerning lanes, avenues, and public squares, in the commons.

Be it ordered by the mayor and board of aldermen of the city of St. Louis, as follows:

Section 1. The lanes and avenues, except the one running between blocks four and five, marked on the survey made of the St. Louis commons, made by Charles De Ward, by order of the committee of
326 the board of aldermen on the St. Louis commons, and approved by the board, and those by this ordinance hereinafter located, are hereby reserved for the purpose of serving as public highways.

Sec. 2. The said lanes and avenues shall be known by the following names, and their breadth and extent shall be as hereinafter specified:

The avenue commencing at Chouteau avenue, running southwardly from thence and parallel to the western base-line of the commons, and terminating at the river Mississippi, is one hundred and twenty feet wide, and shall be called Jefferson avenue.

The avenue immediately east of Jefferson avenue, beginning at Chouteau avenue, and running between lots number ten and eleven, shall be sixty feet wide, and shall be called Fulton avenue.

An avenue running immediately east of Jefferson avenue, and between blocks number fourteen, fifteen, twenty-two, twenty-three, thirty-two, and thirty-three, shall be sixty feet wide, and shall be called and known by the name of McNair avenue.

An avenue running immediately east of and parallel to Fulton avenue, and running between lots number eight and nine, and blocks number three, four, fifteen, sixteen, twenty-one, twenty-two, thirty-three, thirty-four, thirty-seven, and thirty-eight, shall be sixty feet wide, and shall be called and known by the name of Carondelet avenue.

An avenue running immediately east of and parallel to Carondelet avenue, and passing between lots number six and seven, and between blocks number two, three, sixteen, seventeen, twenty, twenty-one, thirty-four, and thirty-five, shall be sixty feet wide, and shall be called and known by the name of St. Ange avenne.

An avenue immediately east of St. Ange avenue, and running between lots number two and three, and between blocks number one, two, seventeen, and eighteen, shall be sixty feet wide, and shall be called and known by the name of Stoddard avenue.

An avenue commencing at Fulton avenue and running to Jefferson avenue, along the north side of blocks number thirteen and fifteen, shall be one hundred and twenty feet wide, and shall be called and known by the name of Park avenue.

Park avenue, extended eastwardly to the east line of lot number nine, and running parallel with the north boundary of said lot, shall be narrowed to sixty feet at said east line, and extended from thence to Carondolet avenue at same width of sixty feet, running parallel with the south boundary of lots number seven, eight, and nine.

The two avenues east and west of the park, extending from Park to Lafayettē avenue shall be one hundred and twenty feet wide, and shall be called and known, the eastern one by the name of Mississippi, the western by the name of Missouri avenue.

The square formed and bounded by Lafayette Park, Mississippi
327 and Missouri avenues, shall be reserved as a public square, subject to such rules and regulations as the mayor and board of aldermen may, from time to time, make in relation thereto.

Block number eighty-six is reserved as a public square or landing, subject as aforesaid.

The lanes running east and west at right angles, or nearly so, with Jefferson avenue, are forty feet wide, and shall be called in numerical order, the northernmost one number one, and so in regular progression to number fifteen, it being the most southwardly one.

Approved 25th March, 1836.

Bill of exceptions.

The defendants offered De Ward's survey of the commons of St. Louis, subdividing the same, 27th December, 1838, to which the plaintiff objected, and the same is admitted to show the claim of St. Louis to the land. The same is read to the jury as follows:

(Map of De Ward not copied, as per agreement. For which agreement see page No. 250 of this transcript.—*Clerk.*)

THORNTON GRIMSLEY, a witness for defendant, being duly sworn, testified:

I came to St. Louis the 9th of October, 1816, and have lived here ever since. I was an officer of the city of St. Louis; in 1836 I was an alderman of the city of St. Louis. I knew the St. Louis commons; they were subdivided for sale by Charles De Ward, who commenced in 1835 to subdivide them. Sales took place under that subdivision. The first sales made under that subdivision was in March, 1836. I was present at those sales every day, as alderman and chairman of the committee on commons. We were selling several days; 4 days or more. The sales took place on the ground; the sales took place under a public notice in the newspapers, that the sale of the commons would commence. It was published in every paper in the city. There were hand-bills every morning of these sales; these notices commenced in January or December for these sales; but I can't remember. We were a long while preparing for these sales. These sales were made on the ground by an auctioneer; there were a great many people attending the sales. All the commons, according to De Ward's subdivision, were sold, with the exception of a few reservations. Lafayette park was one, and the other a fractional block on the river, near the city workhouse. There was likewise a reservation made of 80 acres for a poor-house. I know where the Sugar Loaf is; these reservations are north of the Sugar Loaf. We began our sales at block No. 3, in the northern part of the commons, and sold on east and west till all were sold. The southern part was sold
last, except the lot of St. Arnaud Micheau, which we compromised
328 with him, under the act of the general assembly authorizing the board of aldermen to compromise. There was a discretionary power vested in the committee on commons to compromise with persons claiming adversely to St. Louis. We compromised with Pourcelli and Gamache, Denoyer and Marechal. Micheau, in the first place, claimed, first that he was on a piece of public land that lay between the commons of St. Louis and Carondelet, and that he was going to get a preemption there. There were other parties there. The compromises of Pourcelli and others were in consideration of their long possession. I

did not hear of their pretensions in any other way than in their own right. Micheau had a piece of land of 15 acres, of the city of St. Louis; he had some enclosed by a fence; and then he had another enclosure made south, to get on the public land. His stone house was on the St. Louis commons, and his first enclosure also. He built a little frame house on the public land after the sale. There were no other improvements south of the Sugar Loaf but Micheau's, on the western end; there were other improvements; can't say if they were houses or fences. I went and got a plat of the public land between the two commons, and tried to enter it, but couldn't do it, because it was not of the description of land subject to ordinary entry. The whole St. Louis commons was covered with a fine growth of timber. The trees near Michau were larger than those further west. The whole of this part of the commons was covered with a thick growth of timber. We had to cut roads through the woods to get the trail made for the chain-carriers and surveyors.

A map is here presented to the witness, and he is asked, do you recognise this map?

Answer. I believe this map was made by De Ward, or else it is a first-rate counterfeit. (This was the framed map, and dated 1835.) The land sold from 60 to 100 and odd dollars per acre in that region. Witness is shown the Missouri Republican of January 14th, 1836, and says this is a notice of the sales of the St. Louis commons.

This notice was given daily, up to the 5th day of March, 1836. It was as follows:

Notice of the sales of the St. Louis commons.

By order of the board of aldermen, January 12th, 1836.

Sale of St. Louis commons.

By virtue of an act of Congress passed on the 27th Jana., 1831, further supplemental to the act entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," passed 13th June, 1812, and of an act of the general assembly of the State of Missouri, passed 18th March, 1835, entitled "An act to authorize the
329 sale of the St. Louis commons," the mayor and board of aldermen of the city of St. Louis will, on the first Monday of March next, at the northeast corner of the St. Louis commons, immediately south of the city, at 10 o'clock a. m., proceed to sell at public auction, to the best bidder, a number of lots and blocks, and fractions of blocks, containing not less than one acre nor more than forty acres each, within the limits of the St. Louis commons, agreeably to the terms prescribed in the said act of assembly, that is to say:

1. Upon any sale the purchaser is not to pay the amount bid, but an interest of five per cent. a year on the purchase-money as a yearly rent.

2. At the end of fifty years from the day of sale, and every fifty years thereafter, each lot sold shall be assessed by the public assessor, and the purchaser shall pay five per cent. a year upon such assessed value as a yearly rent.

3. Should the interest remain unpaid for six months after due, the board may annul the sale, and proceed to sell again according to the act of assembly.

4. At the expiration of ten years from the day of sale, or at any time after such term, if the annual rent be duly paid, the purchaser may pay

the amount bid for any lot, and receive a deed in fee-simple, with special warranty only, against the inhabitants of St. Louis and all persons claiming under them.

5. Upon all such sales, deeds are to be executed in duplicate by the mayor and aldermen, and signed and acknowledged by the purchaser, containing all the conditions of sale specified in the act of assembly, and such other provisions as the mayor and board may establish, to secure the payment and collection of the annual rent.

6. If a purchaser neglect or refuse to execute such deed, the lot purchased may be resold, and if it should not bring the sum first bid, the difference may be recovered from the first purchaser, before a justice of the peace. The sale is to be conducted and continued by the committee on the St. Louis commons, under the direction of the mayor and board of aldermen of the city aforesaid.

Jan. 14.

THORNTON GRIMSLEY,
Chairman of Committee on Commons.

☞ A plat of the common can be seen at the city register's office.

T. Grimsley's testimony continues.

On cross-examination, witness testified:

I don't recollect of testifying in the case of McPherson. I don't remember that Micheau came up to the fence and protested against selling of the commons. There might have been occurrences that
330 I did not observe, but anything connected with the sale I recollect distinctly. I recollect of Louis Fassen asserting that Carondelet had commons there, but that was down at the town-hall. Micheau was with them, and Pourcelli, and three or four of them. I don't recollect of being at Micheau's when the surveyors were here. I don't think I saw Micheau in a passion at any time. In the fall, before the sale, the citizens Fassen, Micheau, Pourcelli, and 3 or 4 others, of Carondelet, came to the town-hall. They claimed that the land below the Sugar Loaf was commons of Carondelet. The compromise was made with Micheau the winter before the sale. The price of Micheau's land was 15 dollars an acre. I have no recollection of Micheau claiming under Carondelet. To me he never claimed it only as public land. I am positive. I showed these people this piece of public land between St. Louis and Carondelet, and I had the plat of it and gave it to Thomas Chartrand, who was on the west end of the tract. I got that plat at the surveyor-general's office, of General Milburn, who was the chief clerk. He gave it to me. I am not positive as to the year when I compromised with Micheau. I am certain the compromise was after I got the plat of fractional section 9 from Milburn. I am not positive when I compromised with Pourcelli. I think that all those persons on the Stringtown road had their respective amounts surveyed for them. I recollect of instructing the surveys to be made by De Ward. My impression is that the order for survey by De Ward was before the sales. I was on the ground every day, and there never was but one p'otest that I know of. It was my duty to see to the sale of each portion. Elias T. Langham protested against the sale. He is the only one I remember of. This letter was written by me of the date of 2d March, 1837. I don't recollect of any protest being made by Eugene Leitensdorfer on the ground, at the sale in 1836, in the spring or summer. There were 2 sales of the commons, one in spring of 1836 and one in spring of 1837. Some of the land south

of the Sugar Loaf may have been sold in 1837. There were a great many compromises proposed. I don't remember how many. There were more compromises proposed than there was land to satisfy them. I compromised with Dent, Soulard, and others. There was a record of all these compromises made by the city of St. Louis. There was a record of all these compromises made with Micheau, Pourcelli, and others. My recollection is that I reported every case of compromise to the board in writing. Mr. Demun, the receiver of public moneys or register of public lands of United States, told me this land was not of the description of lands subject to entry. General Milburn told me to put a special application on file, but I did not do it. I made a full report of the sales of 1836 and 1837 to the city of St. Louis, but I am not certain. I am not certain of the *the* time when I reported
331 the sales to Micheau of the parts claimed by him. I am not positive that Micheau's land was not put up and sold at public outcry. Mr. Micheau may have bought the piece at the north of his enclosure at public sale. (Plaintiff hands witness two resolutions of the board of aldermen, of the March and March, 1836, and asked him if he remembered these resolutions.) I recollect that several of these inhabitants of Carondelet appeared there and recommended their claims, and that they went home perfectly satisfied. I showed them that I disputed their claims, and Mr. Prim hooted at the idea. I disputed their claims.

On re-examination, witness testified: I recollect Mr. Paupe, Mr. Fassen. I think Mr. Chartrand talked with me about this matter; they represented themselves a commission from Carondelet. I think they came in the fall, when we were preparing for the sale. We had advertised for all persons who had claims to present them.

Question. What did those persons purporting to represent Carondelet claim, and what took place at that time?

Answer. These gentlemen presented themselves with a paper; they were acting as a commission from Carondelet. We received their paper, and took it under consideration.

Paper called for by plaintiff.

Plaintiff then called for the paper, but the court refused to compel defendant to produce it, and plaintiff objected and excepted.

We showed this people our data for claiming the commons; they came to show to us that they had claims within our surveys. I thought we satisfied them that our claim was the best; they seemed to think they had as much land as we had. I showed to them the public land between the commons. I showed them Brown's survey and our survey. I believe they were satisfied for this reason and others. I believe I got a bill through for them for the sale of other land. Judge Mullanphy, Hugh O. Neil, James C. Spencer, Wilson Primm, and Thornton Grimsley were on that committee. John F. Darby was mayor of the city at that time. Dillon's land was near this city, north of the Sugar Loaf. The claims on the commons of St. Louis were 5 or 6 tiers deep, wedged in side-ways and edge-ways.

Fred. Dent's test.

FREDERICK DENT, being duly sworn, testified:

I know of a case of Bingham vs. Dent, brought in the common pleas court at the August term, 1841. I held adversely to the common of

Carondelet. I remember of the plaintiff in that suit introducing a survey of the commons of Carondelet. The plaintiff objects to this as incompetent and irrelevant.

The plaintiff in that suit introduced that survey to show the ex
332 tent of the commons of Carondelet. My land in that suit was south of the Des Peres, but within the lines of Brown's survey of the commons of Corondelet.

Brown was a witness in that suit for Bingham and for me. This survey was introduced once in that suit. I know I gained the case. I have been sued by the inhabitants of Carondelet, for land in the Cerré, and in the Bolage claim.

Plaintiff in that suit offered Brown's survey of their commons. The suit was brought at the August term, 1842, of the common pleas. They offered Brown's survey before, and from that time it was made in the first suit I had; they offered it.

On cross examination witness testified: I defeated the survey in those suits for Carondelet. My confirmation for Boli and for Cerré was under the act of 4th July, 1836.

On re-examination witness testified: I claimed them as being inhabited, cultivated, or possessed prior to the 20th day of December, 1803.

On re-examination witness testified: I did not claim this land as an out-lot, but under the confirmation of 1836.

Bill of exceptions.

The defendant then offered a resolution to authorize Bingham to prosecute a suit against Dent, of the 30th of April, 1842, to which the plaintiff objected that the same is not properly authenticated, and not within the power of the chairman of the trustees to certify.

The court admitted the same to be read to the jury, and the plaintiff excepted at the time.

The same is read to the jury as follows:

Resl'n authorizing Bingham to prosecute a suit against Dent.

Whereas there is pending in the St. Louis court of common pleas an action of ejectment in the name of John Bingham, against Frederick Dent; now, in consideration of said Bingham consenting that said suit may be prosecuted in his name, the inhabitants of the town of Carondelet do hereby agree to indemnify and have harmless said Bingham against the cost of said suit.

In testimony whereof the board of trustees of said town have caused to be affixed the seal of the incorporation, this 30th day of April, 1842, and the chairman pro. tem. and secretary of the board have affixed their names as such.

[SEAL.]

ANT. BARADA,
Chairman pro. tem.
P. L. McLAUGHLIN, JR.,
Register.

Bill of exceptions.—John Bingham's test.

JOHN BINGHAM, being duly sworn, testified:

I was plaintiff in the suit of Bingham v. Dent. The board of
333 trustees of Carondelet employed the counsel and paid the costs of said suit. I was the lessee of the town. Mr. Dent, after I had a

lease, built a cabin on it. I brought a suit at my own instigation, and under the advice of Carondelet.

On cross-examination, witness testified:

The land was south of the Des Peres. The first trial went in favor of Dent. The second trial went to supreme court. I then withdrew from the suit.

Dr. Robert Simpson's test.

Dr. Robert Simpson, a witness for the defendant, being duly sworn, testified:

I was comptroller of St. Louis. The office of comptroller in 1839 was established; all the matters concerning the commons were referred to me, and I had the control of all sales by ordinance. I was required to sell at different periods, and did sell, all the lots that had not been sold or that had been forfeited. I examined everything and put down every sale and every forfeiture. I begun to sell in 1841. The first sale I had De Ward for salesman. I made out a list of the lots to be sold according to the block and lot, and printed these lists in the papers and in hand-bills; and De Ward made surveys and stakes, and sold all the lots on the ground. We gave general notice to everybody. There were lots sold in the southern part of the common, below the Sugar Loaf, to the extreme end. There were a good many people there. There were some of the commons covered with brush.

On cross-examination, witness testified:

I attended the sales in person. None of the land I sold was occupied. There were some old Frenchmen in the lower part of the commons, who claimed their possession. Lanhead had an improvement there. All of these were since 1841. Every sale ever made is on file in the comptroller's office, and the day and sale, and the date of forfeiture.

R. M. Field's test.

R. M. Field, being duly sworn, testified:

I was employed as general attorney for Carondelet in 1849 to 1851. I was attorney for Carondelet, when the city was organized. I acted as counsel for Carondelet in the case of Gamache vs. Piquinot in the St. Louis circuit court. I was also counsel for the corporation in the case of Carondelet vs. Dent. The title of the Carondelet commons was directly involved. The case of Dent was for land south of the Des Peres. The case of Piquinot was for land between the common fields and the river Des Peres. In both these cases Brown's survey of the Carondelet commons was introduced in support of the title of Carondelet, and other evidence was also given to show that Brown's survey was correct.
334 The American title-paper was Brown's survey. The case of Gamache v. Piquinot, the verdict was for the defendant. The case of Carondelet vs. Dent was commenced by Mr. Whittelsey; we tried the case and won it, and it went to the supreme court and was reversed.

On cross-examination, witness testified:

I made the point in the Gamache claim, that the location was not where the plaintiff sued for it. I also made the point that the statute of limitations should apply. Judge Hamilton would not allow us that defence.

Bern. Poepping's test.

Bernard Peopping, being duly sworn as a witness, testified:

I am the register of Carondelet, and have been for several years. The certificate to these resolutions of the board of trustees are made by me, and the blanks appear on the records which are before me. The blanks were occasioned by the old records being eaten up by the rats or mice.

On cross-examination, witness testified:

These three books that I hold in my hand, are the records of the proceedings of the trustees of Carondelet, from 1832 to 1838, or '9. The records are delivered to plaintiff's attorney, to be used on this trial.

Bill of exceptions.

Defendant then read in evidence a petition of 22d October, 1832, of certain inhabitants of Carondelet, as follows:

Pet'n of cert'n inhab'ts of Carondelet.

CARONDELET, *July 20th*, 1831.

To the honorable the judges of the county court for the county of St. Louis:

The petition of divers inhabitants of the village of Carondelet, township of St. Louis, county aforesaid, humbly showeth, that your petitioners labor under inconveniences for the regulation and government of their village and commons attached thereto, bounded as follows: Beginning in the main channel of Mississippi River, on the north by the St. Louis commons; thence bearing north 57° 59 west, to the line of the common field; thence south with the line of the common-field to the river Des Peres; thence east with the river Des Peres, to the main channel of the Mississippi; thence up the main channel of the Mississippi River to the place of beginning.

Yonr petitioners therefore humbly pray your honors that they may be incorporated, and a police established for their local government, for the preservation and regulation of their town and commons appertaining to the village of Carondelet; and your petitioners, as in duty bound, will ever pray, &c.

Joseph Chitellion.	Eugene Leitendorferer.
Louis Couston.	Cattarin Gamass.
J. B. Chatillion.	Francis Gate.
H. H. Talbot.	Chas. C. Saniganette.
Joseph Green.	Francis Deroin.
John B. Provo.	Wm. P. Madslop.
George Shoults.	Abraham Ringer.
Louis Guion.	Wm. G. Martin.
Gabriel Constant.	Antoine Rondy.
P. D. Barada.	Angston Fourney.
Pre. D. Tellore.	Wm. A. Head.
Thomas Shatron.	Francis Danoyer.
Joseph Shatron.	R. C. Bolwell, or Grorsire.
Newel Shatron.	Bercair.
P. J. Shultz.	Antoine Malat.
Joseph Denney.	Alexsel Pagey.

Joseph Le Coatway.	Antoine Motiar.
T. F. Grey.	Jacob Lasp.
Ant. Barada.	S. Robisons.
Henry O. Barada.	S. J. Cesluns.
A. Tenfrau.	Chas. Tillman.
Lewis Le Coatway.	James N. Morgan.
Zesant Pigeon.	John Wright.
Isdare Barada.	Hiram Wright.
Richard Mallegan.	Jacob R. Stine.
Pascal Mallate.	James C. Evans.
Peter Mallate.	F. Hy. Faver.
L. Fassen.	
57½-55.	Signed—55.

Res'n board of trustees of Carondelet, Oct. 22, 1832.

At a meeting of the board of trustees of the town of Carondelet, held on the 22d day of October, 1832, amongst other proceedings, the following were had, to wit:

"A communication having been received from the inhabitants living west of Fourth street, requesting that they might be included within the line of the incorporated town, Mr. Eiler, having stated that he could survey the town immediately, and that his charge for doing the same would be $5.00 per day, upon which it was concluded to employ him, and he was directed to proceed to work immediately."

Incorp't'n of Carondelet.

Also the order of the county court incorporating Carondelet.

336 In the St. Louis County court—August 20th, 1852.

STATE OF MISSOURI,
County of St. Louis, ss:

And now, at this day, comes in court Jesse Colburn, and presents to the court the petition of certain inhabitants of the village of Carondelet praying to have said village and commons appertaining thereto incorporated, setting forth the metes and bounds thereof. Whereupon the court examine' the said petition setting forth the metes and bounds aforesaid, and on due consideration thereupon had, it manifestly appears to the full satisfaction of the court now here that more than two-thirds of the taxable inhabitants of said village have signed said petition, and considering that the prayer of said petition is reasonable, therefore, agreeably to the statute in such case made and provided, it is considered, ordered, and decreed by the court that said village and the common thereto belonging, situate and bounded as follows, to wit: Commencing at the Mississippi at the Cave Spring; thence running west to Fourth street; thence south twenty-six hundred and forty yards; from thence east to the Mississippi River, be and the same are hereby declared to be incorporated, and that henceforth the inhabitants within the aforesaid metes and bounds shall be a body politic and corporate, by the name and style of "The inhabitants of the town of Carondelet," to all intents and purposes. And the court appoint Louis Fasseux, Eugene Leitensdorfer, Auguste Dube, Louis Guion, and Joseph Chattillion trustees of the same, to serve until their successors shall be duly chosen and qualified according to the provisions of the statute.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Josiah Thornburgh, clerk of the county court within and for the county aforesaid, certify that the foregoing is a true copy of the incorporation of Carondelet, as the same appears on record in my office.

Given under my hand and seal of said court, at office, in the city of St. Louis, this 10th day of March, A. D. 1857.

[SEAL.] JOSIAH THORNBURGH, *Clerk.*

Res'n board of trustees of Carondelet, Nov. 19, 1832.

Also a resolution of the board of trustees of Carondelet of 19th Nov., 1832, as follows:

CARONDELET, 19*th Nov.*, 1832.

"The board met pursuant to adjournment. Present, Messrs. Leitensdorfer, Fassen, Chattillion, and Mallet. The register stated to the board that he had received the sum of $10.50 for licenses granted 337 since the 1st instant, upon which he was directed to apply the said amount for the purpose of paying the hands in Mr. Eiler's employ."

Eiler's report of 26th Nov., 1832.

Also Eiler's report of 26th November, 1832, as follows:

CARONDELET, 26*th Nov.*, 1832.

"The board met pursuant to adjournment. Present, Messrs. Leitensdorfer, Fassen, Chatillon, and Mallet.

"Mr. Eiler, the county surveyor, having stated to the board that he had *not* with considerable opposition from the inhabitants of Carondelet in regard to surveying the town, as the streets in many instances interfered with the lots as they were at present occupied.

"Upon due consideration had on the subject, it was unanimously agreed that Mr. Eiler be furnished with instructions to enable him to proceed to surveying the town.

"*Instructions given to Mr. Eiler, county surveyor.*

"Mr. Eiler will proceed to establish Mr. Colburn's lots upon as favorable terms as Mr. Colburn will consent to, after which he will establish the streets. Each block must be 300 feet (F. m.) square, with the exception of the block immediately above Mr. Colburn, which is to be left as large only as circumstances will permit, in order to derange the present situation of the lots above it as little as possible. Main street is to be 48 feet wide, and each of other streets running parallel with it is to be 35 feet wide; the cross-streets shall be 30 , with the exception of F street, which is 12 feet wide, and 9 street, which is cut , as there is not sufficient ground to leave it without interfering too much with existing arrangements. Mr. Eiler will give such a direction to Main street as will leave a sufficient quantity of ground along the river for a tow. After which the board adjourned."

Proceed's of board of trustees of 3d and 10th Dec'r, 1832.

"Also proceedings of board of trustees of 3d December, 1832, and 10th December, 1832, as follows:

CARONDELET, 3 *Dec'r*, 1832.

"The board met pursuant to adjournment.

"Present, Messrs. Leitensdorfer, Fassen, Chatillon, and Mallet.

"Mr. Thos. Chartrand having produced a certificate of his election as a member of the board:

"The trustees having determined to make an application to the legislature of the State of Missouri for permission to sell such lots, within the town of Carondelet, as were heretofore commons, the register was directed to prepare the necessary documents to accompany the petition.

"Whereupon the board adjourned.

338 CARONDELET, 10 *Dec'r*, 1832.

"The board met pursuant to adjournment.

"Present, Messrs. Leitensdorfer, Fassen, Chatillon, Mallet, and Chartrand.

"The register having prepared the documents necessary to accompany the petition to the legislature, the petition and a map of the town, which was obtained from Mr. , all of which being submitted to the board, the , which approved of the same, and directed that be enclosed to Dr. Wm. Carr Lane, a repre county of St. Louis, together with a letter of instructions.

"After which the board adjourned.

Proceed's of 13th May, 1833.

"Also proceedings 13th May, 1833, as to register filing plat, as follows:

MONDAY, *May 13th*, 1833.

"The board met.

"Present, Messrs. Leitensdorfer, Fassen, and Mallet.

"Ordered, That the register file a copy of the plat of the town of Carondelet with the recorder of the county of St. Louis.

Proceed's 27 May, 1833.

"Also proceedings 27th May, 1833, as to copies of act of 1833, as follows:

CARONDELET, *May 27th*, 1833.

"The board met pursuant to adjournment.

"Present, Messrs. Leitensdorfer, Mallet, Colburn, and Fassen.

"On motion of Mr. Colburn, it was unanimously agreed to have 100 copies of the law entitled 'An act authorizing the corporation of Carondelet to sell and convey certain lots of ground,' passed at the 7th general assembly of the State of Missouri, approved February 13th, 1833, printed, with a notice attached thereto relative to adverse claimants, and that the register distribute the same."

STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do hereby certify that the foregoing extracts from the proceedings of the board of trustees of the town of Carondelet contained in quotation-marks are correctly copied from the journal of said proceedings, as the same now remains of record in my office.

339 In testimony whereof I have hereto set my hand and affixed the seal of said city, this 23d day of February, A. D. 1858.

[SEAL.] BERNARD POEPPING,
Register.

Bill of exceptions.

Defendant then introduced and read in evidence plat of Eiler's survey of the village of Carondelet, as follow :

(For plat see original, page 88.)

Remarks.

On the river Mississippi is left a tow of about 70 feet, English measure. Main street is 48 feet, English, wide, and from the northern to the southern boundary-line of the town 26.24 yards long. 2d, 3d, and 4th streets are each 35 feet wide. The cross-streets are 30 feet, English, wide, with the exception of F street, which is only an alley 12 feet wide, and G street is entirely shut up, owing to the circumstance that there was not sufficient ground for the blocks when those streets should maintain their proper width. The blocks are 300 feet French, 320′ 8″ English, square, with exceptions of fractions on river side, and other fractions whose measurement are given on the plat.

M. L. EILER,
Deputy Surveyor.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder in and for the county of St. Louis, certify the foregoing to be a true copy of a plat of the town of Carondelet, of the Carondelet common, and of the remarks by L. M. Eiler, deputy surveyor, as fully as the same remains of record in my office, in plat-book No. 2, page 68.

Witness my hand and official seal, the 15th day of February, 1858.

Bill of exceptions.

Plaintiff at the time objected to the plat outside of the survey as unauthorized, and no part of the survey ordered; but the court admitted the same, and the plaintiff excepted.

C. C. Whittlesey's testimony.

C. C. WHITTLESEY, being duly sworn, testified:

340 I was employed as counsel by the old corporation, and the new corporation paid me. I was employed in the cases of Bingham vs. Dent, and Carondelet v. Dent. Brown's survey was used on those trials for the support of the title of Carondelet and used at the trials; the claim for commons was made under that survey. Rector's survey was used also, but Brown's survey was mainly relied upon.

Carondelet v. Dent was tried and decided for Carondelet, and went to [the] Supreme Court and was reversed, and then I don't know what became of it. I was attorney in the case of Dent v. Sigerson. Sigerson claimed under Carondelet through Bingham; the surveys of Rector and Brown were used in that case; that case was decided in favor of plaintiff or the title of Carondelet, and was taken to the Supreme Court, and *the* reversed. The trial of Carondelet v. Dent was in 1852.

On cross-examination witness testified:

I did the things I speak of, and ascertained the facts I have spoken of while acting as counsel of Carondelet.

Act of 13th February, 1833.

Act of 13th February, 1833, was read; &

Whereas it has been represented to this general assembly that there are certain lots of ground within the limits of the town of Carondelet, in the county of St. Louis, which belong to the inhabitants of that town in common; and whereas it is also represented that the sale of the said lots would greatly conduce to the present and future welfare of the said town: Therefore,

SEC. 1. Be it enacted by the general assembly of the State of Missouri, That the board of trustees of the town of Carondelet shall have authority to sell and convey in fee all the vacant or unoccupied lots of ground to which the inhabitants of the town of Carondelet shall have the legal or equitable title, which are included in the survey of said town of [Carondelet] made by Lawrence M. Eiler, deputy surveyor of the county of St. Louis, n November last, by authority of the said board of trustees.

SEC. 2. Be it further enacted, That the sale of the said lots shall be made in the town of Carondelet at public auction, at such times and places as the board of trustees of the said town may, from time to time, direct, and that three months' previous public notice shall be given of the time and place of each sale.

SEC. 3. Be it further enacted, That the inhabitants of the said town shall have power to convey all the lots of ground thus sold upon the payment of the purchase-money, according to the conditions of the sale; and the chairman of the board of trustees, in their behalf, shall have authority to execute a deed in fee-simple for the lots thus sold,
341 with special warranty against the claims of the inhabitants of the said town, and against all persons claiming under them, which deed shall be countersigned by the recorder, and shall have the corporate seal of the said town affixed thereto, and shall be effectual to convey all the legal and equitable claims to said lots which accrued to the inhabitants of the said town under the French or Spanish governments and by virtue of acts of the Congress of the United States.

SEC. 4. Be it further enacted, That in all cases where the legal or equitable title of the inhabitants of the said town to any of the lots of ground included in the survey mentioned in the first section of this act is contested by an adverse claimant, that the board of trustees aforesaid shall have authority, at their discretion, to compromise and settle with each claimant, without suit at law or in equity, upon the most favorable terms that can be obtained; and in case any such compromise shall be made and complied with in good faith, a deed of conveyance in fee-simple shall be executed to such adverse claimant by the president of the board of trustees aforesaid, in the manner and under the restrictions prescribed by the preceding section of this act.

SEC. 5th. Be it further enacted, That the funds arising from the sale and release of the lots aforesaid shall be applied by the trustees of said town, at their discretion, agre'ably to the provisions of the ordinances of the said town, for the common benefit of the inhabitants of the said town, and the board of trustees of said town are hereby authorized to perform,

or cause to be performed, all acts that are or may be necessary to carry into full effect the several provisions of this act.

This act to take effect and be in force from and after its passage.

Approved February 13th, 1833.

Bill of exceptions.

Defendant offered in evidence the assignment of school-lands to the village of Carondelet. Plaintiff objected that the out-boundary was not run pursuant to any law, and because the out-boundary was constructed upon a survey then disapproved, and is irrelevant and immaterial.

The same was then read to the jury, as follows:

Assignment of school-lands to Carondelet.

OFFICE OF THE SURVEYOR-GENERAL
OF ILLINOIS AND MISSOURI,
St. Louis, October 24th, 1855.

The survey of the piece of land which is herein platted and described has been executed by Jos. C. Brown, deputy surveyor in the year 1839, under instructions and authority from this office, and in pursuance of the instructions of the Commissioner of the General Land-Office
342 to the surveyor-general, dated the 11th October, 1853. The said piece of land is hereby designated and set apart to the town (now city) of Carondelet for the support of schools therein, under the provisions of the 2d section of the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act, passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,'" it being situated in the common field of Carondelet, and within the bounds of the survey directed to be made by the first section of the act of Congress of the 13th June, 1812, aforesaid, so as to include the town-lots, common-field lots, and commons of the town of Carondelet, and does not, together with the other lands designated and set apart to the said town for the support of schools under the aforesaid 2d section of the act of 26th May, 1824, amount to one-twentieth of the whole lands included in the general survey directed to be made of said town of Carondelet by the aforesaid 1st section of the act Congress of the 13th June, 1812.

The said piece of land was not, so far as the records of this office and the books in the office of the recorder of land-titles show, rightfully owned or claimed by any private individual on the said 13th day of June, 1812, nor was it held as commons belonging to the said town, neither has it been reserved by the President of the United States for military purposes.

T's 44 and 45 N., R. 73, 5th p'l m'n.

(For plat see original, page 91.)

DESCRIPTION.

Beginning at an old stone set in the western boundary of the common-field of Carondelet, marked with a cross on the top, the northwest corner of the lot confirmed to Peter Shoultz, under Christopher Shoultz,

survey number eighty, and the most western corner of this survey, from which a post-oak three and a half inches in diameter bears north sixty degrees and thirty minutes west, distant seventeen links, and a hickory three and a half inches in diameter bears south seventy-four degrees west, distant twenty-two and a half links; thence south fifty-six degrees east, with the northern boundary of the Shoultz lot, seventeen chains and eighty-two links, to an old stone marked with a cross on the top, the southwest corner of a lot confirmed to Francis Porier under John Persellee, survey number seventy-eight, and the most southern corner of this survey; thence north thirteen degrees and forty-five minutes east, with the western boundary of the lot of Porier, four chains and thirty-four links, to and old stone set in the southern boundary of the lot of Robert Buchanon's legal representatives under Louis des Noyers' survey number seventy-six, marked with a cross on the top, the
343 northwest corner of the lot of Porier and a corner of this survey; thence north fifty-six degrees west, with the southern line of the lot of Buchanon, eight chains and ninety-eight links, to a stone sixteen inches long, thirteen inches wide, and two and a half inches thick, set twelve inches into the ground, at the intersection of the southern line of the Buchanon lot with the southern boundary of the St. Louis Prairie des Noyers common-field lot of Charles Sanguinette, under Jean B. Tison, survey number two thousand and twenty-nine, a corner of this survey; thence north eighty-two degrees and thirty minutes west, with the southern boundary of the lot of Sanguinette, eight chains and thirty-one links, to a limestone fifteen inches long, twelve inches wide, and two and a half inches thick, set ten inches into the ground, at the intersection of the southern boundary of the lot of Sanguinette with the western boundary of the Carondelet common field, the most northern corner of this survey, from which the southwest corner of Sanguinette's lot bears north eighty-two degrees and thirty minutes west, distant one chain and forty links; thence south fifteen degrees and thirty minutes west, with the western boundary of the Carondelet common field, forty links, to the beginning corner.

This survey, which is, as aforesaid, situated in the common field of Carondelet, and within townships forty-four and forty-five north of the base line, range 7 east of the fifth principal meridian, in the State of Missouri, contains five acres and sixty hundredths of an acre of land, and is numbered one hundred and twenty-six of the series of Carondelet lands.

A certified copy of the foregoing document was transmitted to E. Casselberry, esq., attorney for the city of Carondelet, on the 25th October, 1855.

JNO. LOUGHBOROUGH,
Surveyor-General.

See his application of 25th June, 1855.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 21st, 1858.

The foregoing plat and description of survey No. 126 is correctly copied from pages 173, 174, and 175 of "record of surveys, school-lands, towns, and villages, Missouri," on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

Jno. Witnell's test.

JOHN WITNELL, being duly sworn, testified:

I have lived here in St. Louis since 1831. I owned some land in the St. Louis commons, so called, in the northwest corner of block
344 84, according to De Ward's survey. My house is there. I have owned that since 1843, when I bought it from Wilson Primm. It was sold in 1836 by the city to Mr. Primm or to Mr. Turnbull. I think it was improved shortly after Mr. Turnbull bought it. I claim my title under St. Louis. I know the line of commons now claimed by Carondelet. It does not touch the block I live on. I own the southwest ¼ of block 84, and it takes part of that. I claim ownership of that under St. Louis title. I bought that in 1843 also. It makes a part of the grounds of my residence. It is enclosed, and has been a great part of the time that I have owned it. I began living there since 1844. I have been improving that property all the time. There are improvements on the portion of the commons now claimed by Carondelet. Mr. Blair has an improvement on the northwest ¼ of block 88. It was improved in 1844; there was a small cabin on it when I went down there, and there Objection. was some enclosure. Mr. Blair has improved there. (Objected to as irrelevant.) The improvements are not costly. He has 9 or ten acres. There is a block east of Blair, on which the Home of the Friendless is, or Widows' Home. Those improvements were made shortly after the first sale of 1836, by Mr. Wetmore. I can't tell how long after that sale it was improved. There is a large building on that property, cost $10,000. I think that has been built some 7 or 8 years. The grounds around it are improved. There is also a brick building on the same lot. That has been built some three or 4 years. These improvements are right on the road from St. Louis to Carondelet. There are about 10 acres in this piece, on the west side of and adjoining the Carondelet road. Mr. Waneres has an improvement south of that. He has gone there in 1836; was one of the first purchasers. He is immediately on the road, in the southwest quarter of block 88. Mr. Blow is there also, on the east side of the Stringtown road. He has improved some two or three years. He is in a fractional lot or block east of the Stringtown road. That ground of Mr. Blow's must have been improved more than 20 years. I do not remember any others. McAnulty also has a lot of 20 acres enclosed.

On cross-examination, witness testified:

He enclosed several years ago. I can't say how long. Not as early as my improvements, excepting the Micheau place, one lot north of it; all the rest has laid open and unenclosed ever since. I went there in 1844. Everybody cut down the small trees that grew upon the vacant property.

Bill of exceptions.—Proceed's of trustees of Carondelet, 4 March, 1848.

Defendant then read to the jury the proceedings of the trustees of Carondelet of 4th March, 1848, as follows:

345 Board of trustees of the town of Carondelet, held on the 4th of March, 1848, the following proceedings were had, to wit:

"Board met by special call: Present, Messrs. Antoine Motier, Joseph Courtois, Michael Conrad, and Mr. , chairman.

"The proceedings of the former meeting having been read and approved of—

"A petition directed to the United States Senate was presented by

Mr. Primm, the attorney appointed by a committee of two members of the board to settle the boundaries of the commons south of the River des Peres, which petition was ordered by the board to be signed by the chairman and countersigned by the register, and have the seal of the town of Carondelet attached to it, which was done as directed.

"Said petition claims nine thousand and upwards arpents.

"The board adjourned till Saturday, 11th inst."

STATE OF MISSOURI,

County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing proceedings contained within quotation-marks are truly and correctly copied from the records of the proceedings of the board of trustees of the town of Carondelet.

In testimony whereof I have hereunto set my hand and affixed the seal of said city this twenty-third day of March, A. D. 1852.

[SEAL.] BERNARD POEPPING, *Register.*

Bill of exceptions.

Defendant then offered the petition of the inhabitants of Carondelet to the Senate of the United States, of the 4th of March, 1848.

Plaintiff objects to this as not certified or properly authenticated.

Mr. McPherson's testimony.

Mr. MCPHERSON, being duly sworn, says that he applied in 1850 for a copy of the original of this, and compared that copy with the original. I compared this copy with the other copy, and believe it to be a copy of the original. This I know to be a copy of the one certified by the clerk of the Senate, which I compared with the original in the House of Representatives. The original in the mean time had been withdrawn. I have seen it after it was withdrawn, in the possession of Willis L. Williams, who was attorney for Carondelet. When I took this copy the original had been withdrawn, in January, 1852. Copy was made after the withdrawal of the original.

Defendant then offered said petition as a sworn copy, and as a certified copy.

346 The plaintiff still objected that the proof was not sufficient to authorize the admission of this copy in evidence, and that the paper is not so certified as to be admissible in evidence.

The court admitted the petition to be read, and the plaintiff then and there excepted.

The same was read to the jury, as follows:

Pet'n of the inhab'ts of Carondelet to the Senate of U. S., 4 Mar., 1848.

To the honorable the Senate and House of Representatives in general Congress assembled:

The petition of the inhabitants of the village of Carondelet respectfully represents, that they are much troubled in their claim to commons confirmed to them by the acts of Congress of June 13th, 1812, and January 27th, 1831, on account of the doubts arising as to the extent of the lands confirmed to your petitioners.

They further present that in the year 1834 one Joseph C. Brown, a deputy surveyor of the United States, acting under instructions from Elias F. Langham, surveyor-general of the United States for Missouri and Illinois, dated Feb'y 10th, 1834, did make a survey of said commons, following the lines of a previous survey of Elias Rector in 1817, and which survey included the quantity of over nine thousand acres.

Your petitioners thought that this survey would be conclusive upon all persons as to the extent of the commons, and that if any dispute should arise as to the extent of said commons, that the matter would be settled by judicial decisions and by the law of the land.

Your petitioners further state, that in 1841, seven years after this survey of Brown's had been made, that the Commissioner of the General Land-Office set aside said survey and ordered a resurvey of the same, but by what authority this was done they were unable to say; but this they do know, that it has caused trouble, confusion, and much litigation.

They would further represent, that the corporate authorities of the village of Carondelet, acting under the belief that this survey of Brown's was conclusive testimony of the extent of their claim to commons, did, in the year 1838, proceed to subdivide said land claimed as commons into small tracts, taking for the out-boundaries the lines as established by the survey of Brown. These subdivisions have been leased by the village authorities to over one hundred persons, all of whom claim under the commons. All these lessees feel alarmed, and are unwilling to make any permanent improvements until they feel assured that they will not be deprived of their property except by their own default.

In consideration of the above facts, your petitioners humbly pray your honorable body to pass an act confirming to the inhabitants
347 of the village of Carondelet their title to the commons according to the survey of Brown, as made in 1834, under the instructions dated Feb. 10th, 1834, so that the matter and disputes may be closed, as far as any legislative enactment can do, leaving individuals who have conflicting rights to settle the same in the judicial tribunal of the county.

In making this request they feel assured that they ask nothing but what they are legally entitled to by the law of the land, as some of the courts of this State have decided that the survey of said Brown is conclusive as to the extent of the commons, and reference is hereto made to the reports of Surveyor-General Milburn upon this subject.

And your petitioners, as in duty bound, will ever pray, &c.

Done at Carondelet this fourth day of March, eighteen hundred and forty-eight. Signed by the president of the board of trustees of said village, with the corporate seal of said village affixed.

[SEAL.] PETER D. BARADA,
Chairman.
MICHAEL CHARTRAND,
Register.

The undersigned, inhabitants of the village of Carondelet, humbly second and support the above petition, and join in the prayer thereof.

L. Fassen.
Peter D. Garmache.
David Briggs.
Bartholomew Guion.
Egnal Bouchy, jun.
Louis Guion.
Bazle Paulet.
Antoine Motier.
John Maraud.
Alex. Denoyer.

	Francois Rille.	Joseph Poucely.
	Peter Poucely.	Antoine Poucely.
	Francis Semay.	Juny Grucho.
	Benoist Marachel.	Peter Chatillion.
	Louis Gamache.	Antoine Marachal.
	Anthony Robert.	Michael Chartrand.
	Antoine Robart.	John B. Bovette.
	Vincent Guion.	Joseph Vien.
	Henry Roy.	Thomas Chartrand.
	Antoine Chouquette.	Joseph Courtois.
	Michael Conrad.	Amable Chartrand.
	Hamilton Micheau.	Antoine Tayson.
	Egnal Bouchy, sen.	John Poucely, sen.
	Julien Gamache.	Joseph Shoults.
348	John Poucelli, jun.	John Fistor.
	William Uno.	Jules Choquette.
	Alexis Pagey.	Antoine Julien.
	Antoine Revance.	John Conrad.
	Louis Tesson.	Geo. F. Eichelberger.
	Auguste Gamache.	Francis Marachal.
	Paul Robert.	M. Miller.
	Martin Crole.	Thos. Sheilds.

STATE OF MISSOURI,
County of St. Louis, ss:

Before me, the undersigned, a justice of the peace within and for the township of Carondelet, county of St. Louis, appeared Richard Barada, who, being by me duly sworn, upon his oath says that the foregoing names were nearly all written by him with the consent of each and every one signed to the foregoing petition, and the balance signed their own names.

RICHARD BARADA.

Sworn and subscribed to before me the 6th day of March, A. D. 1848.

HAMILTON MICHEAU,
Justice of the Peace.

A true copy of the original on file in the office of the House of Representatives.
January 3, 1850.

THOS. J. CAMPBELL,
Clerk H. R. U. S.

WASHINGTON CITY, *January 13th*, 1855.

I certify that the foregoing is a true copy of the original copy certified by the clerk of the General Land-Office, by William M. McPherson, in January, 1850, and that the said copy was on file with the papers in the case when said papers were submitted to the Secretary of the Interior for his approval of the location made by the State of the fract'l section 9, T. 44, R. 7 E., under the 8th section of the act of Sept. 4, 1841. I being at that time a clerk in the General Land-Office, and having charge of the Missouri land business in that office, it became my duty to examine and report upon such cases to the Commissioner of the said office. I thus had occasion to examine the copy of said petition to Congress, filed as aforesaid, which copy is with the papers concerning the Caron-
349 delet commons now before me in the Department of the Interior

for examination, concerning the claim of Carondelet to commons south of the river Des Peres.

JOHN HOOD,
Clerk in charge of the Land Claims in the Department of the Interior.

Evans Casselberry's testimony.

EVANS CASSELBERRY, being duly sworn, testified:

I have been the counsel of Corondelet; was so on the 25th day of June, 1855. I wrote a similar letter to this letter, I suppose. I began on the 20th June, 1855. This was a small strip of land near the northwest corner of the common field of Carondelet. The assignment was made to the use of the schools, according to the request of this letter.

On cross-examination, witness testified:

At that time the corporation of Carondelet claimed commons up to the Sugar-Loaf. The out-boundary would include the common-fields under any circumstances.

Bill of exceptions.

Defendants then offered a letter from Evans Casselberry, as attorney of Carondelet, of 25th June, 1855, to which plaintiff objected as irrelevant and incompetent; but the court admitted the same to be read to , and plaintiff then and there excepted.

The letter was read to the jury, as follows:

Letter from E. Casselberry.

To the Surveyor-General of Illinois and Missouri:

SIR: The undersigned, attorney for the former town (now city) of Carondelet, respectfully asks you to survey, designate, and set apart to the inhabitants of said city, for the support of schools in said city, the lot of land in the common field of Carondelet which is bounded on the east by survey No. 78, on the south by survey No. 80, on the west by the western boundary-line of said common field, and on the north by survey No. 76, containing about seven acres and a half.

The undersigned states that said lot is not rightfully owned or claimed by any private individual.

Yours, respectfully,

E. CASSELBERRY,
For the City of Carondelet.

JUNE 25TH, 1855.

350 OFFICE OF THE SURVEYOR-GENERAL,
St. Louis Feb'y 3d, 1858.

I hereby certify that the foregoing is a true and complete copy of the original on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

Jno. F. Darby's testimony.

JOHN F. DARBY, being duly sworn, testified:

I have lived in St. Louis since December, 1826, permanently. I have

practiced law. I have dealt in real estate, more or less, since my residence here. I have held the office of alderman 1 year, in 1834, and 4 years the office of mayor; was mayor in 1835, '6, '7, and 1840, of the city of St. Louis. The land between the arsenal and Carondelet had hardly any improvements below Madame Soulard's place, at the junction of Carondelet avenue and 5th streets. All the land south of that had scrub-oaks and chenaux and hickory. West of the Carondelet road there was hardly any improvements anywhere. There were some French on the east. Between the arsenal and Carondelet there was hardly anything except the thicket. It was a perfect thicket of small growth from the arsenal to Carondelet up to 1838. There was this thicket at the time of the sale, so that we had to cut the thicket to get through. From the Sugar Loaf south, there is first a ravine, and there the road runs round it. The ground south of the Sugar Loaf was very much broken with sink-holes. It was not worth anything for agricultural purposes. No one would have grubbed and enclosed the land if you had given it to him. The Sugar Loaf is a little mound of no very great height. Everybody sees it to the left of the road. It might be noticed if no attention was called to it.

On cross-examination, witness testified:

I have an indistinct recollection of old Fassen, Paupe, or Leitensdorfer coming to me about this commons north, but can't remember what they said.

Bill of exceptions.

Ordinance of 27th December, 1851, of the city of Carondelet, was then read by the defendant to the jury, as follows:

Ord. of Carondelet, 27 Dec., 1851.

No. 50.—An ordinance to convey certain lands in the common of Carondelet to the United States.

Be it ordained by the city council of the city of Carondelet as follows:

SEC. 1. The mayor is hereby authorized to execute a deed to the Government of the United States for a tract of land in the com-
351 mon of Carondelet, south of the river Des Peres, known and designated on the plat of survey of said common as the "Jefferson Barracks tract," which tract is bounded and described as follows: Containing about seventeen hundred and two acres, bounded on the north by a tract of land confirmed to Julien Chouquette, on the east by the Mississippi River, on the south by lots in the subdivision of the said common, by Jasper Meyer, numbered one hundred and seventy-nine, one hundred and eighty, one hundred and sixty-one, one hundred and sixty-two, one hundred and sixty-nine, one hundred and seventy, and one hundred and seventy-one, (Nos. 179, 189, 161, 162, 169, 170, and 171,) and on the west by lots of same subdivisional survey, numbered one hundred and twenty-four, one hundred and twenty-five, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, and one hundred and seventy-eight, (Nos. 124, 125, 133, 134, 135, 136, 137, 138, and 178.)

SEC. 2. The deed shall be signed and acknowledged by the mayor, attested by the register under the official seal of the city.

SEC. 3. The deed, when executed, shall be transmitted by the mayor to the authorized agent of Carondelet in Washington City, to be retained by him until directed by the mayor, under a resolution of the city council, to deliver the same to the proper agent of the Government of the United States in Washington City.

This ordinance to take effect from and after its passage. Approved Dec'r 27th, 1851.

Bill of exceptions.

Ordinance of Carondelet of 26th June, 1854, No. 152, approved and read to the jury as follows:

Ord. of Carondelet, No. 152, June 27th, 1854.

No. 162.—An ordinance to convey the Jefferson Barracks tract to the United States.

Be it ordained by the city council of the city of Carondelet as follows:

SEC. 1. The mayor is hereby authorized to execute a quit-claim deed to the Government of the United States for a tract of land in the common of Carondelet, south of the river Des Peres, known as the Jefferson Barracks, and more particularly described in ordinance No. 50, entitled "An ordinance to convey certain lands in the common of Carondelet to the United States," approved Dec'r 27th, 1851.

SEC. 2. The deed shall be signed by the mayor, attested by the register under the official seal of the city, and shall be transmitted by the mayor to the Secretary of the Interior of the United States.

352 SEC. 3. Ordinance No. 53, approved January 29th, 1852, requiring such deed to contain a reversionary clause, is hereby repealed. Approved June 27th, 1854.

Bill of exceptions.

Deed of the city of Carondelet to the United States for the Barracks tract, dated 25th October, 1854, was then read to the jury as follows:

Deed of Carondelet to the U. States.

Know all men by these presents, that the city of Carondelet, pursuant to an ordinance of said city, entitled an ordinance to convey the Jefferson Barracks tract to the United States, approved June 27th, 1854, in consideration of the sum of five dollars to said city in hand paid, has granted, remised, released, and forever quit-claimed, and does by these presents grant, remise, release, and forever quit-claim, and the undersigned, John Fester, as mayor of said city, hereby conveys unto the United States of America a certain tract of land lying in the county of St. Louis, State of Missouri, within the common of said city of Carondelet, south of the river Des Peres, and known and designated on the plat of survey of said common as the Jefferson Barracks tract, which is bounded as follows, and contains seventeen hundred and two acres, more or less, to wit: On the north by a tract of land confirmed to Julien Chouquette; on the east by the Mississippi River; on the south by lots in the subdivision of the said common by Jasper Meyer, numbered one

hundred and seventy-nine, (179,) one hundred and eighty, (180,) one hundred and sixty-one, (161,) one hundred and sixty-two, (162,) one hundred and sixty-nine, (169,) one hundred and seventy, (170,) one hundred and seventy-one, (171;) and on the west by lots of same subdivision survey, numbered one hundred and twenty-four, (124,) one hundred and twenty-five, (125,) one hundred and thirty-three, (133,) one hundred and thirty-four, (134,) one hundred and thirty-five, (135,) one hundred and thirty-six, (136,) one hundred and thirty-seven, (137,) one hundred and thirty-eight, (138,) and one hundred and seventy-eight, (178;) to have and to hold the same to the United States of America forever.

In testimony whereof, under the provisions of said ordinance, the mayor of said city has hereto signed his name, and the register of said city has attested the same under the corporate seal of said city, this 25th day of October, A. D. 1854.

[SEAL.] JOHN FESTER, *Mayor*

Attest: BERNARD POEPPING,
Register.

353 STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this 25th day of October, A. D. 1854, appeared before me John Fester, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed of the city of Carondelet for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, clerk of the St. Louis county court, certify that Auguste Gamache, esq., whose name is subscribed to the preceding certificate, was, on the day of the date thereof, a justice of the peace in and for said county, duly commissioned and sworn.

Given under my hand and seal of said court at office in St. Louis the 25th day of October, A. D. 1854.

[SEAL.] J. THORNBURGH, *Clerk.*

Filed and recorded Dec'r 9th, 1854.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from Carondelet to the United States, together with the certificate of acknowledgment, and of the county court, and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book 160, page 130.

Witness my hand and official seal this 23d day of February, 1858.

C. KEEMLE, *Recorder.*
Pr. J. CONRAD, *D'y.*

Ord. of Carondelet, No 53, Jan. 24, 1854.

Ordinance of Carondelet, of 24th January, 1852, No. 53, read by defendants to the jury, as follows:

No. 43.—An ordinance supplementary to an ordinance entitled "An ordinance to convey certain lands in the common of Carondelet to the United States," approved Dec. 27th, 1851.

Be it ordained by the city council of the city of Carondelet as follows:

354 SEC. 1. The deed intended to be made to the United States by the provisions of ordinance No. 50, entitled "An ordinance to convey certain lands in the common of Carondelet to the United States," approved December 27th, 1851, shall be a quit-claim deed, containing a reversionary clause, as follows: That so long as the United States government shall use the said tract of land for military purposes, the title shall vest and remain in said Government, but when it ceases to be used for the purpose aforesaid, the title shall revert to the city of Carondelet.

SEC. 2. Any ordinance or parts of ordinance conflicting herewith is hereby repealed.

This ordinance shall take effect and be in force from and after its passage. Approved January 24th, 1852.

Peyton's White's testimony.

PEYTON WHITE, being duly sworn, testified: I have lived in St. Louis since 1818. I have lived all over town mostly. 23 years ago I put up a fence on the graveyard at corner of 15th street and Park avenue, in St. Louis. It had been used for burial purposes before then. I was not here when the lot was bought by my father. I can't tell how long ago it was that I put up the fence there.

Bill of exceptions.

Plat of United States survey of Oct. 8th, 1855, of the commons of Carondelet, made in accordance with the out-boundary lines of Brown's survey, but excluding the Barracks tract, as surveyed in 28th March, 1855, offered in evidence by the defendant, to which the plaintiff objected that it does not appear to have been executed under instructions of the Commissioner of the General Land-Office.

The court admits the same, and the plaintiff excepted; the same was read to the jury, as follows:

For plat see original, page 101.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, Oct. 8th., 1855.

The above plat of survey No. 1302, in township 43 and 44 north of the base line, and range 6 and 7 east of the 6th principal meridian, of the tract of land confirmed to the inhabitants of the village of Carondelet by the 1st section of the act of Congress approved the 13 June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," and showing the connexion of that survey with the lines of the adjoining public and private surveys, is strictly conformable to the field-notes thereof on the file in this office,

which have been examined and approved. It was originally executed about the year 1817, by Elias Rector, deputy surveyor, whose field-notes are not dated, and its lines were subsequently retraced between
355 the 11th and 17th days of March, 1834, by Joseph C. Brown, deputy surveyor, under instructions of the 10th of the same month, from Elias T. Lanham, surveyor of the public lands for the district of Illinois and Missouri.

The said surveys as retraced by the said Brown was sanctioned by the decision of the Hon. A. McClelland, Secretary of the Interior, dated 23d of February, 1855, which decision was transmitted to this office for its information and government; and pursuant to said decision, there is hereby made a distinct and unqualified exclusion from the survey No. 3102, of survey No. 3341, executed to the amount of 1,702.04 acres, (as shown by the field-notes furnished this office on the 28th March, 1855, by the Commissioner of the General Land-Office,) on the third December, 1840, by Geo. W. Waters, under directions from the War Department, of the military reserve at Jefferson Barracks, as the absolute property of the United States, set apart for their own special use, and in exclusion from any lands for the disposal of the public dom*inion*; and in further pursuance of said decision, it is hereby declared that, as regards the rights of all other demands within the limits of said survey No. 3102, who adversely to Carondelet, this approved plat is in no manner intended, nor shall it be construed to interfere with the rights of such adverse claimants to seek a judicial settlement of their several interests.

(Signed) JNO. LOUGHBOROUGH,
Surveyor-General

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, 15 *October*, 1857.

The foregoing plat and certificate of approval of survey No. 3102, of the common of Carondelet, are correctly copied from the original plat on file in this office.

Surveyor-General.

Plaintiff, in rebuttal, read in evidence to the jury the following proceedings, documents, and papers, to each and every of which the defendant objected as irrelevant and incompetent; but the court admitted them to be read, and the defendant then and there excepted.

The said proceedings, documents, and papers were as follows:

1. Copy of the act of incorporation of St. Louis of 1809.

Act of incorporation of St. Louis, 1809.

In the court of common pleas, November term, 1809, November 9th, 1809.

On petition of sundry inhabitants of the town of St. Louis, praying so much of said town as is included in the following be incorpor-
356 ated, to wit: Beginning at Antoine Roy's mill, on the bank of the Mississippi; thence running sixty arpens west; thence south, on said line of sixty arpens, in the rear, until the same comes to the Barrier Denoyer; thence due south until it comes to the Sugar-Loaf; thence

due east to the Mississippi; from thence, by the Mississippi, to the place first mentioned. The court, having examined the said petition, and finding that the same is signed by two-thirds of the taxable inhabitants residing in said town, order the same to be incorporated and the metes and bounds to be surveyed and marked, and a plat thereof filed of record in the clerk's office; and David Delanny and William C. Carr are appointed commissioners to superintend the first election of five trustees, in pursuance of the law.

STATE OF MISSOURI,
County of St. Louis, ss:

I, William J. Hammond, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true and correct copy of the incorporation of the town of St. Louis by the court of common pleas, in the year 1809, as fully as the same remains of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis this 12th May, 1856.

WM. S. HAMMOND, *Clerk.*

2. Instructions of surveyor-general to Joseph C. Brown to survey commons of St. Louis of 1832.

Instr's of sur. gen'l to survey com's of St. Louis, Nov., 1832.

SURVEYOR'S OFFICE,
Saint Louis, Nov., 1832.

SIR: You are hereby authorized to survey and to connect with the lines of the adjoining public and private surveys the land claimed by the inhabitants of St. Louis as commons.

In executing the above-mentioned survey, you will consider the persons who may be appointed for that purpose by the corporate authorities of the city of St. Louis as the proper agents of the inhabitants thereof, and you will notify the inhabitants of the village of Carondelet at what time you will survey the line between the St. Louis and Carondelet commons, as they are equally concerned with the people of St. Louis in the establishment thereof.

You will survey the commons of St. Louis as nearly in conformity with the enclosed copy of a former survey thereof (marked No. 1) as may be practicable; beginning at the point marked "A" thereof in the southern line of A. Chouteau's mill tract, eleven arpens eastwardly from his corner, numbered five on the plat herewith furnished you, (marked "No. 2,") where you will establish a permanent corner;
357 thence run the course and distance marked on plat No. 1, to intersect the Mississippi river at B, a point twenty arpens below the most western corner of the claim or survey in the name of Susan Dubreuil, where you will set a temporary post on the river; thence down the river the other two courses and distances marked on plat No. 1, to the point C., as represented thereon, where you will also set a temporary post.

You will then return to the point A in the southern boundary-line of A. Chouteau's mill-tract, (being your beginning corner,) and run thence westwardly and northwardly, with two of his lines, to the point marked I on said plat No. 1; thence again westwardly, with another of his lines, sixty arpens, towards the point marked "H" on said plat No. 1; thence

from the termination of said sixty arpens you will run and correct a line to the point marked "G" on said plat No. 1, at which point, by the eastern line of the prairie Des Noyers common-field lots intersects the projection in the survey of Charles Sanguinette, as represented on plat No. 2; thence eastwardly, southwardly, and westwardly, with the lines of said projection, to the point marked "F" on said plat No. 1; thence with the eastern line of the claims or surveys of said Charles Sanguinette and others, to the point marked "E" on said plat No. 1, being the southeast corner of the survey of Charles Sanguinette, under J. B. Tisson; thence from said point E run the other two courses and distances marked on the western boundary of said plat No. 1 to point D, where set a temporary post.

You will then ascertain the southing of the eastern and western boundary-lines of your survey; that is to say, the southing of the points C and D; and in case an east and west line will not connect said points, you will take half the difference of their southing, move your temporary posts north or south, as the case may require, and connect said points C and D, as thus changed, by an east and west line; thence from the point C on the Mississippi River you will run up and with the river to or near the point B, and correct the line; thence to A, the beginning.

You will establish a permanent corner at each angle of the commons; and in connecting your survey thereof with the lines of the adjoining public and private surveys with which you may intersect, you will, in all cases, measure to the nearest corner on the line so intersected, outside of the commons; and in running lines which bind on other surveys you will call for, running therewith, in your field-notes.

I am, sir, very respectfully, your ob'd't servant,

(Signed) E. T. LANGHAM.

JOS. C. BROWN, Esq.,
Deputy Surveyor.

358 OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, Nov. 21st, 1854.

I certify that the foregoing is correctly transcribed from the original instructions on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

3. Report of L. Fassen, protesting against survey of St. Louis commons, of 13th May, 1833.

Report of L. Fassen, protest'g ag'st sur. of St. Louis commons.

(Copy.)—Report of L. Fassen to the board of trustees, dated May 13th, 1833.

The eighth instant, having been required by Mr. Eugêne Leitensdorfer, chairman of the board of trustees, to go and observe the line of separation between the commons of St. Louis and Carondelet, I repaired to the dwelling of Mr. St. Amand Micheau, where Mr. Brown, deputy surveyor, was waiting for me, to begin his operations. I asked him where abouts he was going to take his point of departure. He answered me that his line was to pass one arpent, nearly, lower down than the house of Mr. Micheau. Thereupon I objected to him that he knew very well that our limit or landmark was the Sugar-Loaf hillock; that he had him-

self run that line some years previous in surveying our commons,* and he acknowledged it, but he told me that he had received his instructions, and was obliged to follow them. I replied to him that if his principal had given him an order to draw the line through the middle of the village, he ought certainly to obey, but that, for my part, I was not obliged to witness so unjust a proceeding; whereupon I came away, and his surveying took place in my absence. Mr. St. Amand Michau was present at our meeting, and is witness to the authenticity of my report.

(Signed) LOUIS FASSEN.

CARONDELET, *May 13th*, 1833.

I certify that the above is substantially correct and true, being present at the time.

(Signed) ST. AMAND MICHEAU.

Mr. ELIAS LANGHAM.

SIR: I am instructed by the board of trustees of the town of Carondelet to forward the within report to you.

Yours, &c.,

(Signed) JACOB R. STINE, *Reg'r.*

E. LANGHAM,
Surveyor-General, City of St. Louis.

359 OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, 21st Nov., 1854.

I certify that the above is correctly transcribed from a document on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

Res'll'n of bd. of trust. of Car., adopt. rep't of Fassen.

4th. Resolutions of board of trustees of Carondelet, of 22d July, 1833, adopting said report of Fassen.

JULY 22D, 1833.

The board met pursuant to adjournment. Present, Messrs. Leitensdorfer, Lefavre, Colburn, Fassean, and Chattillion.

The board being called to order, leave being asked and granted, the following report was read:

Report of Mr. Louis Fassen to the board of trustees, dated May 13th, 1833.

The eighth instant, having been required by Mr. Eugêne Leitensdorfer, chairman of the board of trustees, to go and observe the line of separation between the commons of St. Louis and Carondelet, I repaired to the dwelling of Mr. St. Amand Micheau, where Mr. Brown, deputy surveyor, was waiting for me to begin his operations.

I asked him whereabouts he was going to take his point of departure. He answered me that his line was to pass one arpent, nearly, lower down than the house of Mr. Michau. Whereupon I objected to him that he knew very well that our limit or land-mark was the Sugar Loaf

* On the 27th and 28th of March, &c., 1821, under Mr. Rector, surveyor-general at that time.

hillock; that he had himself run that line some years previous, in surveying our commons,* and he acknowledged it; but he told me that he had received his instructions and was obliged to follow them. I replied to him if his principal had given him an order to draw the line through the middle of the village he ought certainly to obey; but that, for my part, I was not obliged to witness so unjust a proceeding. Whereupon I came away, and his surveying took place in my absence. Mr. St. Amant Micheau was present at our meeting, and is witness of the authenticity of my report.

(Signed) LOUIS FASSEN.

CARONDELET, *May 13th*, 1833.

I certify that the above is substantially correct and true, being present at the time.

(Signed) ST. AMAND MICHEAU.

360 On motion of Mr. Lefavre, it was ordered that said report be recorded on our minutes, and that it be filed, as also a copy of said report be sent to A. L. Langham, surveyor-general, in St. Louis.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing extract from the proceedings of the board of trustees of the town of Carondelet is truly and correctly copied from the journal of the proceedings of said board, as fully as the same remains of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said city this ninth day of January, eighteen hundred and fifty-four.

[SEAL.] BERNARD POEPPING,
Register.

5. Resolutions of trustees of Carondelet of the 15th of Sept., 1834.

Res'lt'n of trust's of Car., 15 *Sept.*, 1834.

Amongst the proceedings of the board of trustees of the town of Carondelet, at a meeting held on the 15th day of September, 1834, the following proceedings were had, to wit:

(No. one.) "On motion of Mr, Chartrand, it was ordered that Mr. Leitensdorfer proceed to obtain information from Peter Chouteau and others respecting the land-marks and rights to the commons belonging to the town of Carondelet, and report thereon."

6th. Resolution of same of 6th October, 1834.

Res. of same, 6th Oct., 1834.

At a meeting of said board held on the 6th day of October, 1834, there were present all members; and amongst other proceedings the following were had, to wit:

(No. two.) "On motion of Leintensdorfer, it was ordered the chairman appoint two persons to obtain perpetual testimony to claim on the northern boundary of the commons belonging to this town.

*On the 27th and 28th of March, &c., 1821, under Mr. Rector, surveyor-general at that time.

"The chairman appoints Mr. Leitensdorfer, with instructions to the register for his assistance."

7th. Resolution of board of aldermen of St. Louis of 7th March, 1836.

Res. of board of ald'n of St. Louis, 7 Mar., 1836.

Extract from the journals of the board of aldermen of the city of St. Louis, Monday, March 7, 1836. (In the board of aldermen.)

Mr. Primm laid before the board a paper purporting to be a
361 report signed Ls. Fassen, under date May 13th, 1833, to the authorities of Carondelet, objecting to the survey of the southern line of the St. Louis common as run by Joseph C. Brown in the year 1833, and also the affidavit of Pierre Chouteau under date March 7th, 1835, relative to said line; which were read and referred to the committee on the common, with instructions to suspend the sales of the common south of a line drawn east and west from "Le Pain de Sucre," (Sugar Loaf mound,) on the Mississippi River, to the common-fields of Carondelet, until the claim of Carondelet to that part of the St. Louis common has been investigated. (Vol. II, page 173.)

IN ST. LOUIS, *November* 23, 1853.

I hereby certify that the foregoing is a correct copy from the journals of the board of aldermen of the city of St. Louis.

L. DEGENHART,
Clerk of the Board of Aldermen.

8th. Resolution of board of aldermen of St. Louis of 9th March, 1836.

Res. of same, 9th March, 1836.

Extract from the journals of the board of aldermen of the city of St. Louis, Wednesday, March 9th, 1836. (In the board of aldermen.)

The committee on the common made a report, dated this day, on the report of Ls. Fassen, read at the last meeting, and recommended the adoption of the following, which was adopted, to wit:

Resolved, That the committee on common be instructed to proceed to sell all the land lying within the survey of the common of this city which have been heretofore offered for sale within said survey and advertised for the present sale. (Vol. II, page 176.)

ST. LOUIS, *Nov. 23d*, 1854.

I hereby certify that the foregoing is a correct copy from the journals of the board of aldermen of the city of St. Louis.

L. DEGENHARD,
Clerk of the Board of Aldermen.

9. Resolution of board of trustees of Carondelet of 21st May, 1836.

Res. of trus. of Car., 21st May, 1836.

At a meeting of said board held on the 21st of May, 1836, the following proceedings, amongst others, were had, to wit:

(No. three.) "The board rejoined at 2 o'clock same day, according to adjournment. Messrs. P. D. Barada, St. Amant Micheau, and George Bran; some persons yet absent. After which, the committee on commons reported, and also gave lecture of their proposals to the
362 mayor and aldermen of St. Louis; which lecture was left for a second reading."

10th. Resolution of same of 28th May, 1836.

Res. of same, 28th May, 1836.

At a meeting of said board held on the 28th of May, 1836, were present Messrs. Peter D. Barada, St. Amand Micheau, John E. Leitensdorfer, and George Bran; and, amongst others, the following proceedings were had, to wit:

(No. four.) "The committee on the commons, after some discussion of the board, made their return for the second time of the proposals made by them to the mayor and aldermen of St. Louis, by reading them; which proposals were unanimously approved by the board."

11th. Resolution of same of 4th June, 1836.

Res. of same, 4th June, 1836.

At a meeting of said board held on the 4th of June, 1836, were present Messrs. Leitensdorfer, Bran, and Micheau; and among other proceedings the following were had, to wit:

(No. five.) "The chairman being absent, John Eugene Leitensdorfer was called to the chair; after which, George Brun and St. Amand Michau made the return of the refusal and objection of the board of St. Louis in regard to the north part of the commons of Carondelet, which said board of St. Louis sold as theirs."

12th. Resolution of same of 11th July, 1836.

Res. of same, 11th July, 1836.

At a meeting of said board held on the 11th of July, 1836, were present Messrs. Leitensdorfer, Delisle, and Bran; absent, Messrs. Barada and Michau; and among other proceedings the following were had, to wit:

(No. six.) "Mr. Bran made his report on the meeting held by the inhabitants of Carondelet, and on the rights and authorities granted by them to the board of trustees in regard to the northern part of their commons in contest with the inhabitants of St. Louis, in obedience of which rights and authorities, on motion of G. Bran, the board unanimously resolved that they should be transferred to the committee on the commons."

13th. Resolution of same of 16th July, 1836.

Res. of same, 16th July, 1836.

[No. seven.] CARONDELET, *Saturday, July 16th*, 1836.

"On this day, pursuant to adjournment, the board met.

Present, Messrs. Brun, Barada, and St. Amant Micheau; Messrs. Delisle and Eugene were *were* absent.

The board being called to order, the committee made the return
363 concerning the commission on the northern part of their commons, as follows, to wit: Having met at the place appointed by the board of St. Louis, to settle the difficulties on said part of the commons, the board of St. Louis could not form a quorum, and therefore requested said committee to return on Monday next."

14. Resolution of same of 4th February, 1837.

Res. of same, 4th Feb., 1837.

[No. eight.] "SATURDAY, *February 4th*, 1837.

The board met pursuant to adjournment.

Present, Messrs. St. Amant Michau, George Brun, and John B. Shoults; Messrs. Peter D. Barada and Peter J. Shoults were absent. The chairman being absent, John B. Shoults was called to the chair. The board being called to order, Mr. Brun read a public notice printed in the N. Ws. paper, by order of the mayor and aldermen of the city of St. Louis, in regard to claimants, in order to the lands lying within the survey of the commons of St. Louis, surveyed by James Mackey, and dated January 30th, 1837; after which he made a motion for a public notice in some newspaper should be ordered and given immediately, in answer to the said notice of said mayor and aldermen of St. Louis, in order to protest against it; which motion was unanimously approved and resolved, and said George Brun, committee on the commons of Carondelet, was appointed and charged with the having it printed."

15. Resolution of same of 2d and 4th of March, 1837, and 18th March, 1837.

Res. of same, 4th March, 1837.

At a meeting of said board on the 4th day of March, 1837, were present Messrs. Barada, John B. Shoults, Peter J. Shoults, and Brun; absent, Mr. St. Amand. Amongst other proceedings, the following were had, to wit:

(No. nine.) "A letter dated March 2d, 1837, from Thornton Grimsley, chairman of the commissioners on the commons of St. Louis, was presented to the board by George Brun, and read by the register. Said letter was an answer to that of George Brun, deputed by the board of Carondelet to protest against several certain notices given by said board of St. Louis, as entered on the present book of M. of the present board at our last meeting."

Res. of same, 18th March, 1837.

The board met pursuant to adjournment, on this 18th day of March, Saturday, 1837. Present, Messrs. John B. Shoults, Peter J. Shoults, George Brun, and Peter D. Barada; (St. Amant Michau, absent.)

The board being called to order, on motion of Peter J. Shoults,
Louis Guion, Francis H. Lefavre, and Antoine Barada were ap-
364 pointed judges of election to take place on the first Monday in April next, and the register ordered to give them a due notice of the same. A letter from General Ashley, in regard to the petition presented or intrusted to him concerning the commons of Carondelet, was

presented, and the register required to read the same; after which reading the said letter was ordered to be filed.

The board not seeing cause to proceed on to any business this day, on motion of John B. Shoults, adjourned.

16th. Letter of Thornton Grimsley to the president and board of trustees of Carondelet, of 2d March, 1837.

Letter of Th. Grimsley to pres. and bd. of trust. of Carondelet.

ST. LOUIS, 2*d March*, 1837.

To the president and board of trustees of the town of Carondelet:

GENT': The board of aldermen of this city has instructed me to address you on the subject of your protest against further sales of the commons of this city south of certain boundaries therein specified. The board highly appreciate the friendly feelings set forth in the protest above mentioned, and assure the president and trustees of Carondelet that if they could believe there existed any matter of controversy between the two towns they would gladly embrace the proffered opportunity to have it amicably settled. But believing there is no cause of difference, and knowing each town has their respective quantity of land in these official surveys of commons, they respectively refer your honorable body to the office of the surveyor-general for further information.

I have the honor to be, gent', yours, cincereli,

THORNTON GRIMSLEY,
Chairman of Com. on Commons.

To the President and Board of Trustees of Corondelet.

[SEAL.] Attest: BERNARD POEPPING,
Register.

17th. Letter from Gen'l Ashley, referred to in resolution of board of trustees of Carondelet of 25th May, 1837.

(The letter of General Ashley cannot be found.)

18th. Resolution of board of trustees of Carondelet of 9th of November, 1837.

Res. of bd. of trust. of Car., Nov. 9th, 1837.

At a meeting of said board of trustees held on the 9th of November, 1837, were present all members, and amongst other proceedings the following were had, to wit:

365 (No. twelve.) "Mr. Michau makes a motion for the appointment of a commissary, in order to employ a surveyor to survey the commons; upon which the chairman nominated Louis Fassen to said commission."

19th. Resolution of same of 23d November, 1837.

[*Res. of same, Nov'r 23d*, 1837.

At a meeting of said board held on the 23d day of November, 1837, were present all members, and among other proceedings the following were had, to wit:

(No. thirteen.) "Mr. Fassen makes return of a commission to which he was appointed on the 9th, as follows: He contracted with a surveyor (Mr. Rene Paul) to survey the commons for $7.00 per day and board; and furnishes him, moreover, with 5 men during the time of the survey."

20th. Resolution of same of 21st of February, 1838.

Res. of same, Feb. 21st, 1838.

At a meeting of said board of trustees, held on the 21st day of February, 1838, there was present Messrs. Paupe, Fassen, St. Amant Micheau, and Barada; and amongst other proceedings the following were had, to wit:

(No. eleven.) "On motion of L. Fassen, it was resolved that William Warrens be prosecuted before the circuit court for building on the commons, and that a committee be appointed to make proper arrangements with a lawyer to prosecute said suit; upon which the chairman nominated L. Fassen and J. Barada to that effect."

21st. Letter from Thomas B. Hudson of July 1st, 1838 or 1837, and statement of facts signed by him and admitted.

Letter from T. B. Hudson.

SAINT LOUIS, *July 1st*, 1837.

To the hon. the board of trustees for the town of Carondelet:

GENTLEMEN: Having been informed by my friends that certain individuals concerned in the St. Louis common had expressed their opinion relative to propriety of my acting as attorney for the trustees of Carondelet and at the same time as a member of the board of aldermen for the city of St. Louis, sop'osing, I have no doubt, that my duties would conflict with each other, I confess that I have no such belief; nor do I think it in the slightest degree improper for me to act in both capacities, as in all instances where the city of St. Louis is a party each citizen of *of* the city is also a party to the suit, and the same is conducted under the name of the "mayor, aldermen, and citizens of the city of St. Louis;" hence, if this doctrine be correct, all citizens of St. Louis must be precluded from acting as counsel for the trustees of Carondelet when
366 the corporations are parties litigant, which, in my opinion, is absurd and ridicalous.

I have come to the conclusion to resign the office I had the honor to receive at your hands, in order to avoid any censure from my constituents, or being accused of acting dishonorably in any respect.

I herewith tender my resignation, and regret exceedingly that I cannot consistently with my feelings, after hearing such reports, longer continue to act as your attorney. I also tender my most unfained thanks to you individually and as a body, and assure you that your kindness towards me will ever be remembered with sentiments of lasting gratitude, respect, and esteem.

I have the honor, gentlemen, to be, with much respect, your most obedient and humble servant,

THOS. B. HUDSON.

Attest:
[SEAL.]

BERNARD POEPPING,
Register.

Hudson's statement.

In the year 1836 or 1837, I was notified by the board of trustees of Carondelet that I had been elected by the board attorney for the corporation of Carondelet, which I never accepted, according to the best of my recollection. I remember that very soon after I received notice of my election I notified the board that I could not discharge the duties of atty. for the corporation, and requested them to employ some other attorney. I never met the board since, to my recollection, had any official business with the trustees of Carondelet. One of the members of the board of trustees with whom I was well acquainted often spoke to me in reference to some claims that Carondelet had to commons or lands in St. Louis County, but where they were located, or the extent of the claim, I have no recollection.

THOS. B. HUDSON.

22d. Resolution of board of trustees of Carondelet of the 1st of Sept., 1838.

Res. of trus. of Car, Sept. 1st, 1838.

At a meeting of said board of trustees, held on the 1st day of September, 1838, were present Messrs. Paupe, Leitensdorfer, P. D. Barada, and J. Barada; and among other proceedings the following were had, to wit:

(No. fourteen.) "On motion, Mr. A. Paupe and L. Fassen were nominated commissioners to search the records concerning the north line of the Carondelet commons."

367 STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing abstracts of the proceedings of the board of trustees of the town of Carondelet, numbered and marked in red ink from one to fifteen, inclusive, and enclosed in quotation marks, are true and correct copies of said entries, as fully as the same appears of record in my office, on the journal of the proceedings of said board, under the respective dates before stated.

In testimony whereof I have hereunto set my hand and affixed the seal of said city, at office, this ninth day of July, A. D. 1855.

[SEAL.] BERNARD POEPPING, *Register.*

Bill of exceptions.

Plaintiff then offered in evidence an ordinance and resolution of the council of the city of Carondelet of the 31st of December, 1857, as follows:

Ord. or resol. of Car., Dec. 31st, 1837.

Be it resolved by the city council of the city of Carondelet, That whereas the town or village of Carondelet used as commons, belonging to said village in Spanish times, before 1803 and until 1836, all the land north of the village up to the Sugar Loaf mound on the Mississippi River, and to a line running from the said Sugar Loaf mound, to the northeast corner of the common-fields of Carondelet, as surveyed by Joseph C. Brown

in 1834; and whereas a survey for the St. Louis commons was made in 1831 and 1832 which interfered with and covered a part of the commons of Carondelet, and against which survey the board of trustees of Carondelet filed a protest in the surveyor-general's office in 1833; and whereas in 1834 Joseph C. Brown made a survey of the commons of Carondelet, and run the line on the north from the Sugar Loaf mound to the common-field lot of one Eugé, or near thereto; and whereas said Brown failed to return any plat of survey of said line with the survey of said commons, but, as has been since discovered by the inhabitants of Carondelet, returned another line for the survey of the north line of their commons, and suppressed the true line he had run for the said inhabitants; and whereas at the time said survey of Brown (1834) was made, the village of Carondelet had a tenant on the land north of the north line of the survey as platted by said Brown, as the north line of the commons, at the request of the said inhabitants; and whereas the said survey of Brown was not returned to the Commissioner of the General Land-Office until the 18th of May, 1839, and was disapproved by said Commissioner on the 24th of September, 1839; and where-
368 as the village of Carondelet has always claimed commons up to the said line from the Sugar Loaf mound to the northeast corner of the common-fields of Carondelet, and has always, ever since the said survey of Brown of 1834, protested against the en'roachments and pretensions of St. Louis, and Wm. M. McPherson, and all other persons, upon the land lying south of the said Sugar Loaf and east of the common-fields; and whereas divers decisions as to Brown's survey of the commons of Carondelet have been made by the United States officers in 1839, 1853, and 1855; and whereas the village and city of Carondelet have made attempts, by protest and by appeal, to have the true north line of Brown's survey of the north line of the commons platted and returned, as it ought long since to have been done; and whereas a decision was lately made, in 1855, as to the validity of Brown's survey by the Secretary of the Interior at Washington;

Now, therefore, be it resolved, That the city of Carondelet does claim all the land lying north of the north line of Brown's survey of 1834, as platted by Brown, up to the Sugar Loaf line, to be run from said Sugar Loaf mound to the northeast corner of the common-field of Carondelet, as commons belonging to the village (now city) of Carondelet, and confirmed to the inhabitants of said village by the act of Congress of the 13th of June, 1812, and the land included within Brown's survey of 1834, south of the village and common-field of Carondelet, we, the said city council of the city of Carondelet, for and in the name of said city, do hereby accept as included within the commons of Carondelet, as known and recognised in Spanish times, and confirmed by the same act of Congress; and as to the platted line of Brown's survey of 1834, on the north of the village (now city) of Carondelet, stopping, as it does, short of the true line of the commons on the north, we do hereby, as has been often done before, protest that it shall in nowise affect the title to the land actually embraced within the commons of the village (now city) of Carondelet, north of the said village.

Approved December 31st, 1857.

MADISON MILLER, *Mayor.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, Bernard Poepping, register of the city of Carondelet, do hereby certify that the foregoing is a true and correct copy of a preamble and

resolution passed by the city council of the city of Carondelet on the thirty-first day of December, eighteen hundred and fifty-seven, and approved on the same day, as fully as the same remains of record on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said city, at office, this second day of January, A. D. 1858.

[L. S.] BERNARD POEPPING, *Register.*

339 *Bill of exceptions.*

To the admission of which in evidence the defendant then and there objected and excepted.

The plaintiff thereupon offered to prove that the said resolution was filed in the office of the surveyor-general of Illinois and Missouri, at St. Louis, on the 8th day of January, 1858, and again offered said ordinance or resolution of the 31st December, 1857; but the court excluded the same for any purpose, and the plaintiff then and there excepted.

The plaintiff then read in evidence to the court the following proceedings, documents, and papers, to each and every of which the defendant then and there objected as incompetent and irrelevant; but the court admitted the same to be read, and defendant then and there excepted.

The said proceedings, documents, and papers were thereupon read, as follows:

Letter from Sur. Gen. Milburn to U. S. attorney of Mo.

SURVEYOR'S OFFICE,
St. Louis, 18th of May, 1839.

SIR: In compliance with your letter of the 16th inst., I enclose herewith a plat, marked A, of the survey of the common of Carondelet, and a copy of the notes, marked B, of a Spanish survey of a boundary-line thereof from the S. W. corner of the common-field to the river Des Peres; these papers, together with the several acts of Congress on the subject, and a copy from pages 195 and 196 of Book D, in the office of the recorder of land-titles, to which you are referred, contains all the evidence in this office pertaining to the subject.

I am, respectfully, sir, your obedient servant,
(Signed) WILLIAM MILBURN,
Surveyor-General.

ARTHUR L. MAGENIS,
U. S. Attorney for the District of Missouri.

Letter from Sur. Gen. Milburn to Brig. Gen. Atkinson, U. S. Army.

SURVEYOR-GENERAL'S OFFICE.
St. Louis, 1st of August., 1839.

SIR: Your letter of the 2d of July, asking for information relative to the Carondelet common, was duly received, and would have been forthwith replied to, but that the pressing duties and engagements of this office put it altogether out of my power. I hope, however, that no material inconvenience will result from the delay.

The "claim" of the inhabitants of Carondelet to common will be found in the enclosed copy, marked A, of their notice to the U.
370 S. commissioners, dated 7th of June, 1808, as certified to this office by the recorder of land-titles on the 24th of April, 1829.

The [illegible] with that part which is in the French langage, [illegible] Adolphe Renard, professor of the French and Spanish languages and translator for this office, is also enclosed.

For the confirmation of this claim to common, I must refer you to the first section of the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri;" and for the final and full relinquishment of all the right, title, and interest of the United States, you are referred to the act of Congress or the 27th of January, 1831, entitled "An act further supplemental to an act entitled 'An act making further provision for settling the claims to land in the Territory of Missouri, passed the 13th of June, one thousand eight hundred and twelve.'"

A plat, marked C, of the approved survey of said common, and showing the surveys of six confirmed claims within the limits thereof, is also enclosed.

The notes of the survey of a line from the common-field land to the river Des Peres, which forms a part of the notice of claim to the commissioners, are on record in the Spanish "registre d'arpentage" in this office.

I am, sir, very respectfully, your obed't servant,
(Signed) WILLIAM MILBURN.
Surveyor-General.

Brigadier-General ATKINSON,
U. States Army.

B.—(Referred to in the foregoing letter.)

"A, No. 11."

To the recorder of land-claims for the Territory of Louisiana:

Take notice that we, the inhabitants and settlers of the village of Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land, situate adjoining said village, by virtue of a concession from Dn. Zenon Trudeau, lieut.-governor of Upper Louisiana, dated the 7th of December, 1706, on the part of said inhabitants.

St. Louis, June 7th, 1808.

B'TE LAJOYE, FILS.
sa
LOUIS + MENARD.
marque.

"A, No. 12."

To Don Zenon Trudeau, captain of the stationary regiment of Louisiana, lieutenant-governor and commander-in-chief of the western part of Illinois:

The deplorable condition in which the village of Carondelet is
371 about to fall, now and hereafter, because of the exportation of wood, (here the text is deficient,) the honor to state, that after the petition he handed to you on the 5th of October last, for the purpose of obtaining the continuation of their land, you told them that, although you could not ac'ede to his demand, you would, however, make your efforts to give him forty arpents above their park. The village prays you to be willing to turn your attention to the fact that he has at present a great inducement to work on account of this mill, and that it is his intention to sow with grain as much land as he is able to do. Therefore, this petition is given in charge to Mr. Gamache, to be delivered to you, and he hopes you will be pleased to take into your consideration his de-

mand, and the misery which threatens him, and grant to him a continuation of the lands, (common-fields,) taking for his limits the limit of Mr. Constant; thence to the Mississippi and the river Des Peres for limits owing to the same village of Carondelet.

He expects everything from your goodness, and he believes you will accord his demand. He shall never cease to be thankful to you.

At the village of Carondelet, the 6th of Dec'r, 1796.

his
JOHN B. + GAMACHE.
mark.

The land which is asked for is included in the tract that was reserved to furnish the wood necessary for the uses of the village of Carondelet; and the demand made by Mr. Gamache cannot be accorded, as it is for all the concessions granted in the direction of the line taken at the end of the lands of the said village, and running parallel to the Mississippi, 150 arpens lower.

St. Louis, 7th of Dec'r, 1796.

ZENON TRUDEAU.

"A, No. 13."

Upper Louisiana, village of Carondelet, district of St. Louis of Illinois.—
L. B. No. 139, Fo. 27.

We, the undersigned, a surveyor, commissioned by the government to certify to all to whom it shall appertain that on this day, 21st of Dec'r, in virtue of the order transmitted by the lieut. governor, Mr. De Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of Dec'r, 1796, which line must be parallel with that of Messrs. Ante, Reilhe, and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands, which had been formerly surveyed by Mr. P're Chouteau, in virtue of an order from the lieutenant-governor.

372 Having taken the bearing course of these same lands, I found that they ran S. 28° W. I followed this same course 23 arps. 3½ poles, at which distance I intersected the "river Des Peres." The end of the line on the bank of the same river has been bounded with a stone, having for witness two flint stones and one flattened lead bullet. The land of Mr. Alvarez must be distant from the said stone found 24 feet, in following the same line parallel. And in order that the said inhabitants may prove the same, I have delivered these presents.

St. Louis, of Illinois, the 25th of Dec'r, 1796.

ANT'E SOULARD.

I do certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure, or cause to be measured by one of my deputies, in their behalf, a portion of land which was granted to them as a commons by the lieut. gov., Don Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himself to the village of Carondelet for that purpose. But at the moment he would set his instrument he found it out of order, and of no use to him, an inconvenience which did prevent the said survey to be then made, and the short space of time that was left to attend

to it again has hindered me from being able to satisfy to the calls made on me by the citizens of the settlement of Carondelet.

In faith whereof I have delivered the presents to the interested, that they may serve the same wherever needed.

St. Louis, 18th February, 1806.

ANTOINE SOULARD,
Surveyor-General Territory Louisiana.

Letter from Comm'r Whitcomb to Sur. Gen. Milburn.

"A, No. 16." GENERAL LAND-OFFICE,
Sept. 24th, 1839.

A plat of survey No. 3102, certified by you on the 18th May last, of the common of Carondelet, as surveyed by Joseph C. Brown, deputy surveyor, in March, 1839, with your communication of that date to Arthur L. Magenis, esq., U. States district attorney, and a transcript from page 6 of register d'arpentage, St. Louis, A, have been received at this Office, with a letter of the 22d June last from the Scretary of War.

The subject is brought to the attention of this Office by the Secretary of War, with a view, as appears from his communication, that this Office should take measures to sell the land included within the lines marked with red on the accompanying plat, (the plat above referred to,) from the river Des Peres south, claimed as common by the village of Carondelet, but believed to belong to the United States.

373 In that communication it is also stated that the military reservation desired for the U. States, round the fort at Jefferson Barracks, will be designated whenever the land-office is prepared to sell the residue of this tract of land.

On this subject I herewith enclose a copy of a report, No. 244, of the Solicitor of this Office, in which you will perceive that he is of opinion that Brown's survey, within the limits of which are six private claims, "includes several thousand acres to which the village of Carondelet has no legal or equitable title;" and "if such is the fact, there is no objection to a survey and sale, as public land, of all that part of the tract not needed for military purposes or covered by private claims—indeed, that is the proper course to pursue;" that instructions should be given to the surveyor-general to have the survey executed as required by law, (act of June 13th, 1812, page 216, part 1st, laws and instructions, &c., to which the acts chap. 311 and 406 are supplementary,) viz: to retrace the exterior of the village, including the village-lots, common-field and out-lots and commons, giving the villagers the same lines which they had in 1803, and, after laying down the private claims to section , and subdivide the residue, and return the official plat, that the surveyor-general should refer to the ancient maps and title-papers in his and the recorder's office, and from them ascertain what were the exterior lines, &c.

Concurring in the views of the Solicitor, as stated, I request you will make a thorough and careful examination into the whole matter, in order to determine the limits of the commons of Carondelet to which the villagers are legally entitled, and that you will cause a survey to be made accordingly, and that such lands as may not be found to be within the limits of the commons aforesaid, or covered by private claims, may be surveyed as public lands, and plats of the same duly returned.

You are requested to make a detailed report of all your proceedings, accompanied by copies of all the papers or records that you may be

able to find having a bearing on the claim in question, with a diagram exhibiting the limits of the commons according to the evidences of title.

Very respectfully, your obedient servant,

(Signed) JAS. WHITCOMB,
Commissioner.

WILLIAM MILBURN, Esq.,
Surveyer Genl., St. Louis, Mo.

Letter from Solicitor Birchard to Comm'r Whitcomb.

"A. No. 17." GENERAL LAND-OFFICE,
SOLICITOR'S OFFICE, *August 6th*, 1839.

SIR: In a letter of the 22d June, the Secretary at War requests
374 you to take measures to sell the land south of the river Des Peres, claimed as commons by the village of Carondelet, but believed to belong to the United States.

Accompanying the reference there is also an opinion of the district attorney for Missouri, and sundry papers.

The act of June 13th, 1812, P. I., page 216, confirms the rights, titles, and claims to town or village-lots, out-lots, common-field lots, and commons in, adjoining, and belonging to the village of Carondelet, which lots have been inhabited, cultivated, or possessed prior to the 20th December, 1803, and makes it the duty of the deputy surveyor (when the same had not been already done) to survey the out-boundary of the village, so as to include the out-lots and commons thereto belonging, and to transmit a plat of the survey to the surveyor-general, to be forwarded to the General Land-Office.

Two supplementary acts have been passed, (chaps. 311 and 406,) but as they do not seem to touch the merits of the present inquiry, further reference is deemed necessary. The act of 1812 and the supplementary acts quoted dispose of all the lands included within the exterior lines which the deputies were required to run by the act of 1812. A copy of the plat of the commons of Carondelet, as surveyed by Brown, deputy surveyor, in March, 1824, under the instructions of the surveyor-general of 10th February, 1834, authorizing him to retrace the lines and re-establish the corners of the former survey thereof, and has been furnished by the surveyor-general, which shows that Brown's survey extends south of the river Des Peres, so as to enclose several thousand acres of land, and to include within the exteriors six private claims, three of which are confirmed by the act of 1836.

These concessions furnish evidence that the land in question was not regarded by the Spanish officers as parcel of the village common, because they were all forbidden to grant village commons; and the legal presumption is that they obeyed the instruction, and that, therefore, this land was not a common, but public domain. The title which the inhabitants have exhibited to the land south of the river Des Peres is the statement of Governor Trudeau, dated Dec'r 7th, 1796, rejecting a petition of Gamache, praying for a grant of land below the village, which states "that no concession can be made in the direction of a line taken from the end of the field-lots of the village and running parallel with the Mississippi, and further down said river one hundred and fifty arpens," because the same is within the limits of the land reserved for the purpose of furnishing wood for the village.

This was shown to the board of commissioners for adjusting titles, and accompanied with proof that the inhabitants cut wood below the

village for many years, &c., (2d Am. State Papers, 549,) but the claim was rejected.

375 It appears from a transcript of a survey made Feb'y 25th, 1797, of a tract conceded to the inhabitants Sept. 7th, 1796, that the south line of the grant is bounded by the river Des Peres. This survey being made subsequent to the rejection of Gamache's petition, if it be, as is supposed, a survey of the commons, will overrule any inference to be drawn from the expressions used by the governor in refusing the prayer of Gamache.

My belief is that Brown's survey includes several thousand acres to which the village of Carondelet has no legal or equitable title; and of the same opinion is the district attorney of Missouri.

If such is the fact, there is no objection to a survey and sale, as public land, of all that part of the tract not needed for military purposes or covered by private claims. Indeed, that is the proper course to pursue.

I advise giving instructions to the surveyor-general to have the survey executed as required by law, viz: to re-trace the exterior of the village, including the village lots, common-field and out-lots, and commons, giving the villagers the same lines which they had in 1803, and no more; unless, prior to the act of 1812, the corporate limits had been fixed and extended beyond the limits of 1803; and, after laying down the private claims, to section and subdivide the residue and return the official plats.

The surveyor-general should refer to the ancient maps and title-papers in his and the recorder's office, and from them ascertain what were the exterior lines of the just claims in 1803.

It will be best to require copies of the papers and a report from him.

I am, &c.,

M. BIRCHARD, *Solicitor.*

To JAMES WHITCOMB, Esq.,
Commissioner, &c., &c.

Letter of Sur. Gen'l Milburn to chairm. b'd of trus. of Carondelet.

SURVEYOR-GENERAL'S OFFICE,
St. Louis, 5th of December, 1839.

SIR: I enclose herewith, for the information of the corporate authority of the town of Carondelet, the copy of a letter, dated 24th of Sept., 1839, from the Comm'r of the Gen'l Land-Office, in relation to the land embraced in the survey of the Carondelet common, south of the river Des Peres; and also the opinion of the Solicitor of the General Land-Office on the same object.

As it is my wish to report to the Commissioner of the General Land-Office without delay, I have to request that any information
376 which the trustees may desire to furnish be handed in at their earliest convenience.

I am, sir, very respectfully, your obed't servant,

WILLIAM MILBURN,
Surveyor-General.

NICHOLAS POPE, Esq.,
Chairman of the Board of Trustees of the town of Carondelet.

Letter from Gen. Milburn to U. S. rec'r of land-titles for Missouri.

SURVEYOR-GENERAL'S OFFICE,
ST. LOUIS, 14*th of Dec'r,* 1839.

SIR: I am instructed by the Commissioner of the General Land-

Office to make a thorough, careful examination of the claim of the inhabitants of Carondelet to common, and to report to him, in detail, all my operations.

To enable me to comply with this instruction, I have to request a copy from the records of your office of all the documents relating to said common which have not heretofore been furnished this office.

The only paper which I find on file here from your office having a direct bearing on the subject is a copy of the notice to the recorder, and the accompanying papers, from pages 195 and 196 of record-book D.

The papers in this office which have an indirect bearing are those relating to the grants and confirmations of the following claims:

Eugene Alvarez, certificate 1339 } of the old board of commission-
Julien Chouquette, " 904 } ers.

Gabriel Constant, confirmation for thirty-five arpents, by the act of Congress of 29th of April, 1816.

Gabriel Cerre, decision 60 }
Treget Delor, " 121 } of the late board of commissioners,
Jean B. Martigny, " 170 } and confirmed by the act of 4th
Sophia Bolage, " 279 } July, 1836.

These papers are defective in the following particulars:

1st. Those which relate to the claims of Alvarez, Chouquette, and Constant are mere abstracts of the confirmations, and contain nothing whatever concerning the origin of the titles, either with the Spanish or U. S. governments, nor of the evidence upon which the confirmations were founded.

2d. Your certificates of decisions No. 60, 170, and 279 of the late board of comm'rs seem to contain copies of all the proceedings which had been had thereon, but the certificate of the confirmation under decision No. 121 gives nothing more from your records than the plat and notes of a survey by Joseph C. Brown.

377 You will please to make good these defective papers, and furnish me with such other information as your records afford; that is, in any way whatever connected with the claim to the common of Carondelet.

I, am, very respectively, sir, your ob'd't servant,

WILLIAM MILBURN,
Surveyor-General.

F. R. CONWAY, Esq.,
U. S. Recorder of Land-Titles for the State of Missouri, St. Louis.

Letter from Gen. Milburn to James Whitcomb, Com'r of Gen'l Land-Office.

B.

SURVEYOR'S OFFICE,
ST. LOUIS, *29th February*, 1840.

SIR: I could not, consistent with the then pressing duties of this office, take up the subject of the Carondelet common, required by your letter of the 24th of Sept'r, until some time in the last part of the month of November. Upon examining the matter, I considered it right and proper to inform the corporate authorities of the village of what was intended, and accordingly addressed them a note, of which the enclosed paper numbered 1 is a copy. I received for answer a note, and enclose

you a copy thereof, numbered 2. As they asked me to withhold any final action or report on the subject until they communicated all the information they could state, it was, in my opinion, due to them, as a matter of courtesy, to give ample time, even much more than I might consider necessary, to prepare the intended statement.

Their report or statement, dated the 12th instant, was received a short time back, and the business will now be attended to at an early day. This information is given with reference to your letter of the 13th instant, calling my attention to the subject.

I am, very respectfully, sir, your obed't servant,

WILLIAM MILBURN,

Surveyor of Public Lands in the States of Illinois and Mo.

JAMES WHITCOMB, Esq.,

Comm'r of the Gen'l Land-Office, City of Washington.

Rep't of Sur. Gen. Milburn of 15th April, 1840, to Com'r Gen'l Land Office.

"A, No. 18."—*Report on the Carondelet commons.*

SURVEYOR'S OFFICE,
ST. LOUIS, *15th of April*, 1840.

SIR: In compliance with your letter of the 24th of Sept'r, 1839,
378 I have examined all the papers in this office, and all which I can find in the office of the U. States recorder of land-titles, that have any bearing, either directly or indirectly, on the title of the inhabitants of Carondelet to common south of the river Des Peres, and submit for your consideration every fact which has come to my knowledge in relation thereto, and give the conclusions that I draw therefrom.

I will first take up the subject under the heads and in the order following:

1st. A statement in detail of the progress of the claim from its presentation for record to the U. States recorder of land-titles up to the passage of the act of Congress of the 13th of June, 1812.

2d. Give the construction put upon the act of 13th June, 1812, with respect to the commons of Carondelet, by the surveyors-general for this district and the present recorder of land-titles, and the evidence of their respective constructions.

3d. Consider some of the arguments of the Solicitor of the General Land-Office against the validity of the title of the inhabitants of Carondelet to common south of the river Des Peres.

1st. In conformity with the 5th section of the act of Congress approved the 3d March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," the inhabitants of Vide Poche, (Carondelet,) on the 7th of June, 1808, presented to the recorder of land-titles a notice in writing, and the written evidence of their claim to common, which notice in writing and written evidence was duly recorded on pages 195 and 196, book D, in the office of said recorder, as will be seen by the enclosed copy thereof marked A. This written evidence, placed upon record in conformity with law, furnishes us with the following facts:

1st. In answer to the petition of Gamache of the 6th of December, 1796, for a grant of the land lying between the field land and village of Carondelet and the river Des Peres, and extending from Constant to *to* the Mississippi, the Spanish lieutenant-governor declared in writing, on the 7th of the same month, that the land which is asked for is included in that which has been reserved to furnish the wood necessary to the

village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower, cannot be admitted.

2d. That on the 21st of Dec'r, 1797, Antoine Soulard, the surveyor-general, in virtue of the order of the lieutenant-governor enjoining upon the inhabitants of Carondelet to make known the line of a tract which was conceded to them on the 7th of Dec'r, 1796, commenced the survey of said line. He first ascertained that the course of the line of which it was to be a prolongation was S. 28° W., and he followed
379 the same course 23 arpens 3 ps. ½, at which distance he intersected the river Des Peres, and ceased operations.

3d. That the said surveyor-general (Soulard) afterwards sent a deputy to complete the survey of the common, and that the deputy failed in the undertaking on account of his instrument being out of order.

We now come to the proceeding before the board of commissioners, which you will find in the accompanying papers, marked B and C.

Throughout the proceedings of the board, the land claimed and asked to be confirmed by the inhabitants of Carondelet, as common, said to be 6,000 arpens, is the same which the lieutenant-governor declared on the 7th of Dec'r, 1796, had been reserved to furnish the wood necessary to the village, and comprised within the limits designated in said declaration, in which no grants could be admitted, and which Chouteau and Provenchere proved had been used as common since about the year 1770.

The final decision of the board of the 2d of January, 1812, is in these words: "It is the opinion of a majority of the board that *that* this claim ought not to be granted; Clement C. Penrose, commissioner, voting for a confirmation thereof, under the usages and customs of the Spanish government."

(See also Am. State Papers, p. 672, vol. 2, Public Lands.)

The board having closed its labors on the 24th January, 1812, sent the report to Washington by Commissioner "Penrose."

(See page 677, Am. State Papers, vol. 3, Public Lands.)

On the 20th of March, 1812, ex-Commissioner Penrose, who was then in Washington City, submitted for the consideration of Mr. Gallatin, Secretary of the Treasury, a classification of the claims which had not been finally confirmed or granted by the board of commissioners, and some remark thereon.

(See page 447, and following, of vol. 2, State Papers, before referred to.)

The 9th class of Major Penrose consists of "claims for commons, viz, St. Charles, St. Louis, and Carondelet," these being the towns whose claims had been rejected by the board. And in his remarks thereon, (see page 449,) he says: "The ninth class ought to be confirmed; they would have been under every practice we have seen had the Spanish government continued the possession," &c.

On the 24th of the same month Major Penrose condensed, for Mr. Gallatin, his classification of the claims on the 20th, in which condensation the 5th class is as follows: Claims for towns or villages, their common-fields or field-lots, and their commons, either recorded or not recorded." In remarking this classification, Major Penrose says, "By the spirit of the ordinance, all these claims would have been confirmed or granted, although not embraced by the strict letter;" and he
380 comes to the conclusion, with reference to what he supposed to be the intention of our Government, namely, "to do justice to their newly-acquired citizens," that "there can be no hesitation in

confirming or granting such claims as are comprehended in the five foregoing classes."

These two letters of ex-Commissioner Penrose were communicated by Mr. Gallatin to the House of Representatives on the 22d of April, 1812.

We also find on pages 450 and 451 of vol. 2, Am. State Papers, a classification of the "claims" by Col. Riddick, who had been employed as clerk of the late board, addressed to Jeremiah Morrow, the chairman the Committee of Public Lands.

His 49th class of claims embraces villages, commons, common-fields, and lands adjacent, given to the inhabitants individually for cultivation, possessed to the 20th of Dec'r, 1803.

Col. Riddick remarks upon this classification:

"The foregoing table or list is intended to show the claims of Louisiana in all the variety of shades in which it is possible for the claimants to place them, out of which a selection may be made of such as are not yet provided for by law, but nevertheless ought in justice to be confirmed or granted to the claimants;" and he concludes with recommending that the 49th class be confirmed at once by the outer lines of a survey, to be made by the principal deputy, &c.

Following quickly after the note of Commissioner Penrose, that the Carondelet common should be confirmed as claimed before the board, his classification of the "claims," for Mr. Gallatin, Secretary of the Treasury, on the 20th and 24th of March, 1812, which Mr. Gallatin communicated to Congress on the 22d of April, and in which classification Major Penrose distinctly refers to the claims for commons, as presented to the board; and the classification by Col. Riddick, addressed to the chairman of the Committee of Public Lands, in which he recommends that the claims to commons be confirmed, not by a survey already made, but by a survey to be made. We have the act of Congress of the 13th June, 1812, which enacts "that the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons, in, adjoining, and belonging to the several towns or villages of Portage des Sioux," &c., "Carondelet," &c., which lots have been inhabited, cultivated, or possessed prior to the 20th day of Dec'r, 1803, shall be the same, are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto, &c.; and it shall be the duty of the principal surveyor for the said territory, as soon as may be, to survey or cause to be surveyed and marked (where the same has not already been done according to law) the out-boundary lines of the said several towns or villages,
381 so as to include the out-lots, common-field lots, and commons thereto respectively belonging," &c.

It will be observed that this law of the 13th of June, 1812, did not provide for further investigation of the claims for commons, but confirmed them absolutely, with reference, of course, to some determinate boundaries, for the indentification whereof we had the indisputable means, which in the case of the common of Carondelet can be no other than the written declaration of Gover. Trudeau of the 7th of Dec'r, 1796, which had been duly recorded in the office of the U. States recorder of land-titles, unless the quantity specified is to have precedence of the boundaries designated, in which event, according to the practice of this office, the claimants would be allowed the privilege of directing on which side or end the excess or deficiency should be thrown off or taken in.

The subject of the commons, &c., was brought to the consideration of Congress by Mr. Gallatin, Secretary of the Treasury, who, it appears from what has been stated, consulted and advised with ex-Commissioner

Penrose, and communicated to the House of Representatives the information relating thereto, which he derived from that source. Indeed, it is well understood here that Mr. Penrose draughted the bill that was enacted by Congress, and approved the 13th of June, 1812, and, in addition to the information thus derived from Mr. Penrose, we find Mr. Morrow, the chairman of the land committee, consulting Col. Riddick, late clerk of the board, who, as well as Mr. Penrose, advised the confirmation of the commons as claimed.

If there was any doubt as to the true meaning of the law approved the 13th of June, 1812, when considered by itself, the train of operations here detailed seems to me conclusive that Congress intended to confirm, and did confirm, the common of Carondelet according to the claim therefor of record in the office of the recorder of land-titles. To what claim for common can the said act of the 13th of June, 1812, refer, if it is not to the claim on record in the U. S. recorder's office, and which had been before the board for confirmation? This claim was for the specified quantity of 6,000 arpens, as being the area comprised within certain designated boundaries. The only question therefore which can arise, according to my understanding, is whether the specified quantity or the designated boundaries will control.

The requirements of inhabitation, cultivation, or possession can apply to the lots only; they have no connection with the common in the wording of the law. If I understand it rightly, indeed inhabitation and cultivation are foreign to the uses for which commons were granted. If, however, it be decided that the requisite of possession has reference to the common, the testimony of Chouteau and Provenchére before the board, prior to the passage of the law, (accompanying paper, B,) settles that point.

382 They prove that the land south of the village, and now (at the time of testifying) claimed, was made use of and possessed in the usual way of possessing common since about the year 1770, and the extent of the common then claimed, and thus proven to have been possessed, is distinctly fixed in the declaration of the lieutenant-governor by boundaries (although not run) so definite that they cannot be misunderstood.

2d. I will now proceed with the construction of the law of the 13th of June, 1812, by the several surveyors-general of this district, and the present recorder of land-titles.

1st. William Rector, surveyor-general. See the accompanying copy, marked "D," of the field-notes of a survey executed under his authority shortly after the passage of the law, and a plat of the same.

2d. William McRee, surveyor-general. See the accompanying copy marked "E," from the record, of his letter to Charles Biddle, dated 25th of April, 1829, in answer to Mr. Biddle's application for the survey of a New Madrid claim, which letter of Col. McRee closes with this unequivocal paragraph:

"The original merits of the claim to commons set up by the inhabitants of Carondelet, the validity of the evidence or genuineness of the documents adduced by them before the board of commissioners in support of their pretensions, were no doubt very proper subjects for the consideration of Congress prior to the passage of the act of the 13th June, 1812, confirming their claim. But they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary-lines of the tract as claimed before the board of commissioners, provided these

boundaries can be established without interfering with any prior confirmed claim."

3d. Elias T. Langham, surveyor-general. See a copy, marked "F," of his instructions to Joseph C. Brown to connect with the adjoining public and private surveys survey of the claim of the inhabitants of Carondelet for common, as surveyed under the authority of General Rector; and also the copy, marked "G," of an approved plat and description of said survey, as executed and connected by Brown, under the instructions aforesaid.

4th. Daniel Dunklin, surveyor-general. See a copy, marked "H," of his voucher No. 3, of account-current for the 2d quarter of 1838, under the general surveying appropriation, which shows that he paid Mr. Brown for running the lines of the commons and connecting them with the lines of the adjacent public and private surveys, under Mr. Langham's instructions of the 10th of February, 1834, and thereby approved
383 the proceeding; for had he decided that the commons was not confirmed, or if he had had any doubts on the subject, he would have objected to the operation as illegal, and would not have paid for the survey, knowing, as he did, that an account for payments for illegal work would be disallowed in his settlement at the Treasury.

5th. F. R. Conway, the present recorder of land-titles. See the accompanying copy, marked I, of the confirmation certificate issued on the 22d of August, 1834.

It may be proper to state that I have not found any written evidence of the construction of the law by either Mr. Bates or Mr. Hunt, the predecessors of Mr. Conway.

I do not furnish this construction of the law, the *the* surveyor-general and the recorder, nor the vote of Commissioner Penrose, and the opinions and statements of said Penrose and of Col. Riddick, under the belief that they are to control the undisputed meaning of the law, but that they may have due weight in case of doubt, as showing, first, the feelings and opinions of those who were mainly instrumental in the passage of the act; and, secondly, the understanding of those whose especial business it has been to carry the law into effect, and who had no other interest in the matter than the obligation of performing in a proper manner the duty required of them as officers appointed to execute the laws of the land.

3d. I will now consider some of the arguments of the solicitor of the the General Land-Office against the validity of the claim of the inhabitants of Carondelet to common south of the river Des Peres.

The solicitor says, with reference to the six private claims within the common as surveyed by Brown: "These concessions furnish evidence that the land in question was not regarded by the Spanish officers as parcel of the village commons, because they were all forbidden to grant village commons, and the legal presumption is that they obeyed the instruction, and that therefore this land was not a common, but public domain."

With due respect for the opinion of the solicitor, I think a further examination cannot do otherwise than overcome this objection, as it will be seen that of the six claims to which he refers only five are found on Spanish authority, and we have no evidence whatever of any action of the five by the Spanish officers after the declaration of the lieutenant-governor of the 7th of December, 1796, on which day, it seems from the certificate of Soulard, (accompanying paper A,) the land was conceded to the inhabitants of the village, having been possessed and used as common since about 1770. (See the accompanying paper B.) Indeed,

with but little exception, these five claims all seem to have lain dormant from their conditional incipiency until their revival under the laws of the U. States.

384 I will take up the six claims separately, in the order of their confirmation, and examine them with reference to the foregoing objection of the solicitor, and take such other notice of them as may seem to have any bearing on the general object of this communication.

But before proceeding I will observe that the Spanish concessions generally contained a condition, either expressed or understood, that they were not to be prejudicial to the rights of others, and that the land belonged to the king's domain, this being a necessary precaution, because connected maps on which the land was platted down when granted or surveyed did not belong to their system of laying off and disposing of the public domain, and we find that it was the universal custom of Surveyor-General Soulard, before putting a party in possession by survey, to notify the surrounding neighbors, (when there were any,) and to certify on his returns that his operations were performed in their presence. The practice, therefore, must have been, when it was found that one of these conditional grants interfered with other rights, that the surveyor-general did not (as indeed he could not lawfully do) put the party in possession, but that the whole proceeding was arrested; and whilst the Spanish government continued in the possession, other land was no doubt given, when desired by the claimants, in lieu of the pre-occupied conditional concessions. If, therefore, it shall appear that none of the concessions south of the river Des Peres, in the Carondelet commons, were surveyed, and the claimants were never put in lawful possession, and that the tract north of the river, although surveyed before the concession of the common, was apparently forfeited for want of improvement within one year and a day, will it not be proper, in absence of a better reason, to attribute this general failure to the ascertained interference of said claims with the land reserved for the use of the village, and afterwards conceded as common, and the consequent intention of the gov't not to perfect any of the said individual titles, which is plainly indicated by the lieutenant-governor in refusing the petition of Gamache?

In considering what is now to be said, it will be particularly necessary to distinguish in point of time between the general expression relative to the reservation of village common and the concession therefor. I will now take up the claims in the order before designated, and proceed with the examination thereof.

1st. Julien Chouquette—Survey No. 904, for 640 arpens.

This title is not of Spanish origin, but it has its beginning with the Gov't of the U. States, and was confirmed on the 25th of June, 1810, under the 2d section of the act of Congress of the 3d of March, 1807, which requires ten years' possession prior to the 20th day of December, 1803, whereas Chouquette only proves, by his ex-parte testimony,

385 inhabitation and cultivation for one year, and cultivation for 6 or 7 years, which does not bring his possession down to 1803. He may have been dispossessed on account of intruding on the common, as was "Andre," the boat-builder, as proven by Col. Auguste Chouteau in the accompanying document B.

This case, therefore, furnishes no ground to doubt the validity of the grant of common to the inhabitants of Carondelet village by the Spanish government. See the accompanying paper, marked "K," which contains all the evidence respecting this claim up to the confirmation.

2d. Gabriel Constant, junior—Survey No. 2033, for 35 arps.

It will be seen by the accompanying copy of his grant and Spanish survey, marked "L," that the land was conceded on the 4th of Sept'r, 1795, on condition that it be surveyed as soon as practicable, and also improved within a year and a day. The survey was executed on the 15th of April, 1796; but we find, by the enclosed copy, marked "M," of the proceedings before the board, that Constant's only proof with respect to inhabitation and cultivation is that he cultiva*tion* 9 consecutive years prior to 1810, and that he inhabited one winter 8 or 9 years prior to the 29th of Dec'r, 1813. It would therefore appear that, before the concession of the common, Constant's conditional grant was forfeited for want of being improved within a year and a day. But this claim has nothing to do with the common south of the river Des Peres, as it lies altogether on the north side thereof, and within the bounds of what the solicitor considers Soulard's survey of the common on the 21st December, 1797, and which he seems to admit was confirmed by the law of the 13th of June, 1812.

3d. Gabriel Cerré—Survey No. 3067, for 400 arpens.

This claim was granted by Manuel Perez on the 15th of March, 1789, upon condition to establish and improve it in the term of one year. See the accompanying paper, marked "N." The grant, being upwards of seven years prior to the concession of the common, cannot operate to the prejudice of the claim for common, except so far as the identical land conditionally granted to Cerré is concerned.

There are other considerations with respect to this claim of Cerré which it will be well to notice, namely, the land may not have been improved in one year from the day of the grant, as you will see the witness is in doubt on that point, and he informs me it was cultivated but one season; and although it was proved before the board that the land was surveyed by Antoine Soulard, under the Spanish authorities, yet there is no survey on record, nor any certified copy or the original produced.

You will see by document "N" that the plat produced is one of a survey executed by Mr. Brown, who, in 1853, certified the plat, and thinks that all the corners marked "S" were found in old corner-stones in 1862. Now, this survey by Mr. Brown is not an official survey by authority of the surveyor-general, but it is a private affair, and it is not 10 by 40 arpens, as granted to Cerré, and therefore the stones which were found cannot be corner-stones of a lawful survey of the grant.

386

This is illustratedon the accompanying diagram, marked "O." Indeed, so different is Mr. Brown's survey, executed in 1822, and certified in 1833, from the older of the Spanish governor, that Surveyor-General Dunklin disregarded it altogether in running out the tract under the confirmation, although he was repeatedly and nrgently solicited to recognise it.

4th. Pere Delor—400 arpens—Survey No. 2993, under decision No. 121 of the late board of commissioners. (See accompanying paper, marked "P.")

This confirmation is founded on a paper produced to the board, and which, in the language of the board, purports to be a concession, but which does not appear in the proceedings to have been proved as genuine. I have, however, examined the original, which is now on file in the recorder's office, and have no doubt of the authenticity thereof. The order of the lieutenant-governor bears date 6th of Dec'r, 1796, (the day before his declaration in accompanying paper A relative to the common,) and directs the surveyor to put the petitioner in possession of the land

he asks, provided it belongs to the king's domain, and is not prejudicial to any other concession heretofore granted.

From the date of this order to the transfer of the country to the U. States was upwards of 7 years, and we have no other evidence of a Spanish survey having been executed than that Mr. Boli states he was several times shown a tree, said to be the corner of said land as surveyed before Mr. Brown's operation in 1821, and that when Mr. Brown was running the lines, he (Boli) saw trees marked with old blazes, and heard of said Delor and others that these old lines were run by Bouvet, who was commissioned surveyor at the date of the concession, &c.

Mr. Brown, who would have been the proper person to prove the existence or the appearance of old corners and live trees, is silent on that head, both in his affidavit and certificate and plat of survey.

There is no evidence of inhabitation or cultivation under either the Spanish or American government.

Mr. Delor was a man in office in the village, and, unless he voluntarily abandoned the claim or was deprived of it by lawful authority, would hardly have suffered it to sleep for seven years without making a move towards being put in possession according to the customs of the country, in order that he might obtain the title in due form, and make the establishment and improvements contemplated in his petition.

5th. Jean Baptiste Martigny—480 arpens—Survey 3119. Decision No. 170 of the late board of commissioners.

387 This tract was conditionally granted on the 25th of April, 1783, more than 14 years before the conceding of the commons. One of the conditions of this grant is that Martigny improves the plantation he asks for; on the contrary, the land to be incorporated to the royal domain. The requirement of improvement had of course reference to the time limited in the Spanish regulations, namely, a year and one day, and the only evidence of improvement is that Martigny had a house on the land and lived there 4 or 5 years; that he had a corn-field and garden, and had the place under cultivation till he sold it; but when he sold it it is not stated, nor can I find any evidence thereof upon record in the proper offices of the county. The cultivation may therefore not have been within the time required by the Spanish regulations, nor indeed is it certain that it was whilst the Spanish government possessed the country. We have no evidence of any Spanish survey, or of Martigny having been put in lawful possession, although the conditional grant was upwards of 20 years before the change of government. See the evidence respecting this claim in the accompanying paper, marked "Q."

6th. We now come to the 6th and last claim confirmed and surveyed within the common: Sophia Bolage—150 arpens—Decision No. 279 of the late board of commissioners.

The order of the Spanish lieut. governor of the 3d of June, 1796, is as follows: "In case the land asked for belongs to the king's domain, the surveyor of this jurisdiction shall put the petitioner in possession of the quantity of arpens she asks in the manner designated, in order to deliver to her the concession in form after the plat and certificate of survey are made out." (See the accompanying paper, marked "R.") Although more than seven years elapsed after this order before the transfer of the country, the petitioner was never put in possession by the surveyor-general nor was the concession delivered in due form.

The only evidence of cultivation is the affidavit of one individual before a justice of the peace in 1819, when no board of comm'rs was sitting. This individual testifies that corn and potatoes were planted and a house

built about 30 years before that date, which would be 7 years before the order of survey, and does not accord with the words of the petitioner, who only says she had the timber prepared for a house, and had begun a field, &c.; we have no proof of either a survey, inhabitation, or cultivation, or any attempts thereat, after the conditional order of the lieutenant-governor.

From what is here shown with reference to these private claims, it must be evident they would not in the least affect the title of the inhabitants of Carondelet to common within the limits designated by the lieut. governor in his declaration of the 7th of Dec'r, 1796, if the claim for common was up for adjudication; but as the said claim for com-
388 mon was confirmed by the act of the 13th of June, 1812, the question as to the original merits, or the extent thereof, is not now a subject for consideration; all we have to do is to survey the claim as confirmed.

The solicitor further observes, the title which the inhabitants have exhibited to the land south of the river Des Peres is the statement of Governor Trudeau, (dated Dec'r 7th, 1796,) rejecting a petition of Gamache, praying for a grant of land below the village, which states "that no concession can be made in the direction of a line taken from the end of the field-lots of the village, and running parallel with the Mississippi, and farther down said river one hundred and fifty arpens, because the same is within the limits of the land reserved for the purpose of furnishing wood for the village."

This was shown to the board of comm'rs for adjusting titles, and accompanied with proof that the inhabitants cut wood below the village for many years, &c., (2d Am. State Papers, 549,) but the claim was rejected.

The declaration of the lieutenant-governor was not merely shown to the board of comm'rs as is above intimated, but it was placed upon record on the 7th of June, 1808, in accordanoe with the laws of the U. States, as I have before stated, and the original still remains on file in the recorder's office. I have examined the writing and signature of said lieut. governor in said original declaration, in connection with his writing and signature in the "Livre Terrien," and other original documents now in the recorder's office, and I am fully satisfied as to the genuineness thereof; indeed, so perfectly do they compare with each other that there is no room to doubt.

It is true that the claim for common was rejected by a majority of the comm's, as stated in the above quotation from the solicitor. That rejection, however, applies alike to the land north and south of the river Des Peres; it is equally true, also, that very soon after this rejection by the board the Congress of the U. States confirmed the claim of the inhabitants of Carondelet to common, and this confirmation most certainly embraces all the land claimed upon record, and includes what lies south as well as that which lies north of the river Des Peres, within the bounds designated in the declaration of Governor Trudeau.

The solicitor observes in continuation: "It appears from a transcript of a survey made *February 25th, 1797, of a tract conceded to the inhabitants †Sept. 7th, 1796, that the south line of the grant is bounded by the river Des Peres. This survey being made subsequent to the rejection of Gamache's petition, if it be, as is supposed, a survey of the commons, will overrule any inference to be drawn from the expressions used by the governor in refusing the prayer of Gamache."

*Dec'r 21st, and certified 25th Dec'r, 1797. †Dec'r 7th, 1796.

The solicitor is wholly in error with respect to this transcript;
389 it is not therefore to be wondered that he comes to a wrong conclusion.

The transcript of the survey is not, nor does it purport to be, the transcript of a complete survey, but the transcript of the survey of a single line, or only part of one of the boundary-lines of a claim, which is fully proven by the certificate of the surveyor-general, Soulard, recorded in the notice of the claim.

(See accompanying paper A.)

The solicitor continues: "My belief is that Brown's survey includes several thousand acres, to which the village of Carondelet has no legal or equitable title. If Mr. Brown's survey contains several thousand acres to which the village of Carondelet has no legal nor equitable title, then, unless it be decided that the quantity claimed controls the boundaries, or that the indication of the position of the line by Soulard's survey, on the 21st of Dec'r, 1797, and in the calls in the claims of Alvarez and Valle, is to be disregarded, their whole claim for common must fall to the ground, for its foundation is with reference to the declaration of the lieutenant-governor, recorded and filed by them in the office of the U. States recorder of land-titles, and to which all subsequent proceedings, including the act of Congress of the 13th of June, 1812, have distinct reference, either directly or so plainly implied as not to be misunderstood."

Prior to the passage of the said act of the 13th of June, 1812, they had never claimed otherwise that as specified by Trudeau. Then, if Congress did not mean to confirm their claim according to said specified boundaries, what other limits could have been intended?

The solicitor says, in conclusion: "The surveyor-general should refer to the ancient maps and title-papers in his and the recorder's offices, and from them ascertain what were the exterior lines of the first claims in 1803. It will be best to require copies of the papers and a report from him."

There are no ancient maps in either this or the recorder's office which have any bearing on the subject, and the only ancient title-papers which go to show what were the just bounds in 1803 are the declaration of the lieutenant-governor of the 7th of Dec'r, 1796, the certificate of survey of that part of the western boundary which lies north of the river Des Peres, and the certificate of the surveyor-general relative to the cause of failure in completing the survey, all copied in the accompanying paper A, and the papers relative to the claims of Alvarez and Valle, marked "S" and "V," and which will be noticed immediately following.

Having disposed of the subject to the extent designated in the outset
of this communication, I will introduce some additional evidence
390 that the title of the village of Carondelet to common south of the river Des Peres was officially recognised by the Spanish lieut. governor, and that such seemed to be the common understanding of the people of the country up to the change of government.

Although the first official statement which we have of the extent of the common of Carondelet is the declaration of the lieut. governor of the 7th of Dec'r, 1796, yet we have *have* evidence that their title south of the river Des Peres was officially recognised before that date. You will see by the accompanying copy (marked "S") of Alvarez's petition for a grant of land, dated 15th Nov'r, 1796, that he asks for the "vacant land lying from the limits of the land of Carondelet to those of Mr. Reilhe, which he thinks will be about 6 arpens in front, facing the river Des Peres, by forty in depth." (This the plat marked "U" and connected

plat X will show you is north of the river Des Peres.) He further asks: "And on the opposite side of said river, ten arpens wide, departing from the limits of Carondelet, and ending at those of the lands of the domain."

The lieut. governor, on the 18th of the same month, directs the surveyor-general to establish the petitioner upon the lands asked for, and subsequently thereto to execute the survey, &c.; all of which was duly registered and recorded, and the claim was confirmed by the old board of commissioners.

See the accompanying copy of proceedings, marked "T," in which, however, the board has omitted, in reciting the outlines of the petition, to notice the *expresses* therein relative to the limits of Carondelet south of the river Des Peres.

Also, after the declaration of the lieut. governor that certain land had been reserved for the village, and no concessions could be admitted between the river Mississippi and a line running parallel thereto, 150 arpens from the field-lands, we have the petition of Charles Valle, dated 11th of April, 1797, who states that two years before he had formed an establishment on the river Gravois; therefore "he prays the lieut. governor to be pleased to concede to him 15 arp's, wide by 40 deep, the limits thereof to be taken at the limit of the village of Carondelet," &c.

The lieutenant-governor directs the "surveyor to put the petitioner in possession of 400 arpens of land, at the place by him designated, so far as the land is there vacant and the granting thereof is not prejudicial to anybody." (See the accompanying paper, marked "V," which also shows that this grant was surve'd by the deputy surveyor, James Mackay, on the 17th of April, 1803, containing 413 arpens, being an excess of 13 arpens.) And on the 6th day of February, 1804, the executor of the estate of Valle sold 4 by 40 arpens of said land to John Colgin, and in the deed the land thus sold is described as being on the river Gravois, and bounded on one side by the "commons of Carondelet." This deed was executed in the presence of the lieut. governor, Delas-
391 sus, and by him approved, and duly and properly witnessed and authenticated.

The claim was confirmed to the extent of 400 arpens by the old board to said John Colgin, under Charles Valle, to be taken within the bounds of the 413-arpent Spanish survey. See the accompanying paper, marked "W." The survey and its connections with the public surveys, under the confirmation, gives the position of this claim of Valle with reference to the Carondelet common, as represented by the accompany plat X, on which it is numbered 2995. It does not exactly adjoin the line of the commons as surveyed by Brown, there being a space intervening between them; but as the survey includes the establishment of Valle on the Gravois, and is upwards of 100 arpens southward of the southwest corner of the field-lands, and lies very near the Carondelet line, we can draw therefrom no other conclusion than one favorable to the claims of the village for common to the full extent of the 150 arpens from the line of the common field.

I enclose a plat, marked "X," of the survey of the common of Carondelet, as retraced by Mr. Brown, and connected with the adjoining public and private surveys, showing the position therein of the six private claims to which the solicitor refers, and also the surveys of Alvarez and Valle, just before referred to, and containing other information in a marginal note, not directly connected with the present inquiry, but which it i

proper for your attention to be called to, whether you decide in favor of or against the claims of the villagers.

From the facts here presented and the inferences which I have drawn therefrom, you will see that my construction of the law is distinctly in favor of the village to the extent of 150 arpens from the S. W. corner of of the field-lands; and were there no controlling circumstances, I would not hesitate to run the west boundary, as represented by the black dotted line *c d*, on the plat X, which is 150 arpens, parallel to the general course of the Mississippi; but when I take into consideration the operation of Soulard, in running the line *c e* north of the river Des Peres, and the Spanish calls for the limits and common of Carondelet, in the claims of Alvarez and Valle, I am led to believe that it was the intention of the Spanish government to prolong the line *c e* to *a*, which is about parallel to the river for some distance; and that as the act of Congress had in view the carrying out and fulfilling this intention of the Spanish government, as claimed before the board, it ought now to be adhered to by adopting the line *c a*.

As no great injury can result from a delay, I have thought best to submit this statement and the accompanying documents before ordering a survey inasmuch as there seems to be a contrariety of opinion, and you
392 have the controlling power in case of disagreement, and can understand the subject as well in its present condition as if a new survey was actually made.

I also enclose the communication, marked "Y," of the attorney employed by the board of trustees of the village, and the affidavits, numbered 1 to 7, to which he refers.

The other papers which he calls for have already been enumerated, and are properly referred to in the margin of the argument.

I am, very respectfully, sir, your obedient servant,

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

JAMES WHITCOMB, Esq.,
Commissioner of the General Land-Office,
City of Washington.

A.—(With preceding report.)

To the recorder of land-claims for the Territory of Louisiana:

Take notice that we, the inhabitants and settlers of the village of Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land, situate adjoining said village, by virtue of a concession from Don Zenon Trudeau, lieut. governor of Louisiana, dated the 7th Dec'r, 1796.

St. Louis, 7th June, 1808.

On the part of said inhabitants,

B'TE LAJOYE FILS.

LOUIS + MENARD, Pere.
sa
marque.

[N. B.—The original of the following documents, Nos 1 to 4, is in the French language. I give the translation as given in the sur. general's report, deeming that all-sufficient.

F. M.]

No. 1.

To Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieut. governor and commander-in-chief of the western part of Illinois.

The deplorable condition in which the village of Carondelet is about to fall, now and hereafter, on account of the exportation of wood, [(a) induces the undersigned to have] the honor to state that after the petition he handed to you on the 5th of October last, for the purpose of claiming the continuation of their lands, you told him that, although you could not accede to his demand, you would, however, make your efforts to grant him 40 arpens above the Parc. The village prays
393 you to be willing to turn your attention to the fact that he has at present a great inducement to work on account of this mill, and that it is his intention to sow with grain as much land as he is able to do. Therefore this petition is given in charge to Mr. Gamache, to be delivered to you, and he hopes that you will be pleased to take into consideration his demand and the misery which threatens him, and grant to him the continuation of the lands, (common-fields,) taking for his limits the limit of Mr. Constant; thence to the Mississippi and the river Des Peres for limit, coming to the same village of Carondelet. He expects everything from your goodness, and believes that you will grant his demand. He shall never cease to be thankful.

At the village of Carondelet, the 6th of Dec'r, 1796.

his
JOHN B. + GAMACHE.
mark.

(a.) These five words have been introduced by the translator to supply the deficiency of the text.

No. 2. The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower, cannot be admitted.

St. Louis, the 7th Dec'r, 1796.

ZENON TRUDEAU.

No. 3. Upper Louisiana, village of Carondelet, district of St. Louis of Illinois.—L. B., No. 139, fo. 27.

We, the undersigned, a surveyor commissioned by government, do certify to all to whom it shall appertain that on this day, 21st of Dec'r, in virtue of the order transmitted by the lieut. governor to Mr. de Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of Dec'r, 1796, which line must be parallel with those of Messrs. Ant'e Reilhe and Alvarez.

The said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands which had been formerly surveyed by Mr. Pre. Chouteau, in virtue of an order from the lieut. governor. Having taken the bearing course of the same lands, I found that they ran S. 28° W. I followed this same course 23 arpens 3½ poles, at which distance I intersected the river Des Peres; the end of the line on the

bank of the same river has been bounded with a stone, having for witnesses two flint stones and one flattened lead bullet. The land of Mr. Alvarez must be distant from the same stone bound 24 feet, in
394 following the same line parallel; and in order that the said inhabitants may prove the same, I have delivered the presents.

St. Louis of Illinois, the 25th of Dec'r, 1797.

ANTOINE SOULARD.

No. 4. I do certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure for them, or to cause to be measured by one of my deputies, a portion of land which was granted to them as a common by the lieut. gov'r, Don Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himself to the village of Carondelet for that purpose. But at the moment he would set his instrument, he found it out of order, an inconvenience which did prevent the said survey to be then made, and the short space of time that was left to attend to it again has hindered me from being able to satisfy to the urgent calls made on me by the citizens of the settlement of Carondelet.

In faith whereof I have delivered the presents to the interested, that they may serve the same wherever needed.

St. Louis, 18th February, 1806.

ANTOINE SOULARD,
Surveyor-General Territory Louisiana.

NOTE.—That part under No. 1 of this translation, from the imperfectness of the original, could be rendered in two versions; either as a collective petition of sundry inhabitants of Carondelet asking for common fields, and intrusting Gamache with the care of handing of their document, or as a demand made by Gamache for himself. This last version has been adopted by the translator as the more conformable to the expressions used by the Zenon Trudeau in his declaration upon the request, and the wording of the proceedings of the board of commissioners in the claim of the Carondelet common.

"A, No. 14." B.

(Being the "proceedings of the old board, 1808 and 1812." See page 26 of this transcript.—*Clk.*)

C.

(Evidence and survey of 1808, by Bent. See page 30 of this transcript.—*Clk.*)

"A, No. 15." D.

(Rector's survey, with field-notes and certificate. See page 32 of this transcript.—*Clerk.*)

395 E.

Letter from Wm. H. McRee to Chas. Biddle.

SURVEYOR'S OFFICE, ST. LOUIS,
25th April, 1829.

SIR: I have to acknowledge the receipt of your letter of the 23d in.

stant, informing me that, as I had expressed some doubts about complying with your application for a patent (survey) for the tract of land located by virtue of the New Madrid certificate, (No. 338,) in the name of Patterson, you have concluded to submit the matter to the decision of the Commissioner of the Gen'l Land-Office; and that, before taking this step, you wish to know whether there are any documents officially known to me, which show that any claim for commons has ever been made by the people of Carondelet; and if so, whether any limits to their claims have ever been stipulated; or, in short, whether I have any other official knowledge on the subject, except what is contained in the act of Congress passed the 13th June, 1812.

In reply to these inquiries, I have to state that the only information possessed by this office, and on file at the date of your letter, concerning the Carondelet commons, was the law of the 13th June, 1812, which confirms them as claimed, and a statement in the register d'arpentage, from which it appears, that by virtue of an order from the lieutenant-gov'r, a line had been run from the S. W. corner of their lands ("a prender de la derniere borne posse a l'extremite de la profondeur de leur terres;" meaning, I presume, the S. W. corner of their common fields,) 23 arp's 3 p's ½ to the river Des Peres, on a *a* course S. 28° W., parallel to the S. E. boundary-line of the claim of Alvarez, and distant from it, "24 feet." This line purports to be a boundary to ground conceded to the inhabitants of Carondelet on the 7th Dec'r, 1796, and is therefore an intimation, (however indefinite,) of their claim in common to lands beyond and south of their village and common-field lots.

During the conversation I had with you and General Ashley, on the subject of the New Madrid certificate, (No. 338,) I took it for granted that the location made under that certificate was within the reputed limits of the Carondelet commons, in which case I was (and still am) of the opinion that I could not with propriety cause it to be surveyed; for, if there were any facts, or any information whatever, concerning those commons, which might enable me to determine their boundaries, &c., as claimed before the board of commissioners, and which were of record in the recorder's office, they constituted, in the contemplation of the law, a part of the official information within my reach, and therefore virtually in the possession of this office.

On the receipt of your letter of the 23d instant, I addressed a note to the recorder of land-titles, requesting him to furnish me with such
396 extracts from the records of his office in relation to the Carondelet commons, as might enable me to ascertain their extent, boundaries, &c. And in answer to that application, I have received from him some extracts from the proceedings of the board of commissioners, a copy of which is herewith enclosed for your information.

Permit me to call your attention to the declaration of the lt. gov., Zenon Trudeau, (which you will find among these extracts,) on the petition of Jean B'pt'e Gamache for a tract of land, which petition is refused, for the express reason that the land requested "is comprised in that which has been reserved to furnish the wood necessary to the village of Carondelet;" and the lt. gov'r goes on further to say, that the demand "ne put avoir lien, ainsi que toutes concessions accordier dans la direction de la ligne puise au bout des terres du dit villages, et courant parallellement au Mississippy cent cinq'te arpens plus bas."

Now, a line running from the S. W. corner of the common field 150 arp's—or rather, the line which had been run from the S. W. corner of the common fields to the river Des Peres—if extended to 150 arpens in

a direction parallel to the Mississippi River, will include the greater part of the tract located under the N. M. certificate No. 338.

The original merits of the claims to commons set up by the inhabitants of Carondelet, the validity of the evidence, or genuineness of the documents adduced by them before the board of commissioners, in support of their pretensions, were, no doubt, very proper subjects for the consideration of Congress prior to the passage of the act of the 13th June, 1812, confirming the claim, but they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary-lines of the tract as claimed before the board of commissioners, provided these boundaries can be established without interfering with any prior confirmed claim.

Respectfully, you' most obed't servant,

WM. H. McREE.

CHAS. BIDDLE, Esq.,
St. Louis.

"A, No. 29." F.

Instr't's to Jos. C. Brown.

SURVEYOR'S OFFICE,
St. Louis, 10th February, 1834.

To JOS. C. BROWN,
Deputy Surveyor:

SIR: You will receive herewith a copy of the field-notes of the survey of the land claimed by the inhabitants of Carondelet as commons, but which is not sufficiently connected with the adjoining public and private surveys.

You are, therefore, hereby authorized to retrace the lines, and
397 re-establish the corners of said survey, and to connect it with the said adjoining surveys, by establishing the proper corners at the intersection of the several lines thereof with the lines of the other claims, and with the lines of the public surveys, and measure and state in your field-notes the course and distance therefrom on the lines so intersected to the nearest corner outside of the commons.

When the corners described on the within copy of the field-notes of the survey of the commons can be found and properly identified, you will run to them. When they cannot be so found and identified, you will run the proper course and distance, or to the intersection of the natural or artificial boundary called for, viz, the Mississippi river, and the common fields and Alvarez claim, as the case may be.

If the s'western corner cannot be found, you will re-establish it at the intersection of the southern and western boundary-lines of the survey.

You will consider the corporate authorities of Carondelet as the proper source of information or instruction in all cases when, under similar circumstances, an individual claimant would be applied to in the survey of his claim. You will, therefore, give the said authorities due notice of the time when you will commence operations. You will connect this survey with the survey of the commons of St. Louis, whether it interferes therewith or not.

For executing the surveying hereby authorized, there shall be paid to you, on account of the U. States, at the rate of three dollars per mile for

every mile and part of a mile of the boundary-line of the commons, and of the lines measured from the corners established at the intersection of the commons therewith, to the nearest corner outside of the commons, provided your returns are made within sixty days from the date hereof, and that your surveys and returns are approved of by the U. States surveyor in Illinois and Missouri.

You are also authorized to survey 35 arpens for Gabriel Constant, at the expense of the claimant, and connect it with the public lines at the expense of the U. States, at the rate of $3.00 per mile.

This survey will be according to the enclosed transcript of confirmation, marked "A," and the original survey, marked "B."

The claimants must show the corners at the extremities of the line of their survey, which runs S. 45° E. Said corners, as will be seen by the paper marked "B," are stones witnessed by the dross of iron. In all cases not otherwise herein specified you will be governed by the instructions issued to you on the 4th inst. for the survey of the claims of Gervais and Ortiz, so far as said instructions are applicable thereto.

I am, sir, very respectfully, your obedient servant,

E. T. LANGHAM.

398 G.

(Plat and survey of the commons of Carondelet, by Jos. C. Brown, see page 34 *in* of this transcript.—*Clerk.*)

H.

This document consists of nothing more than Joseph C. Brown's account against the U. States for the execution of the foregoing survey; and it is therefore deemed useless to insert here.

I.

(Certificate of confirmation by recorder of land-titles. See page 40 of this transcript.—*Clerk.*)

Claim of Julien Chouquette.

"A, No. 24." K.

To Frederick Bates, Esq., recorder of land-titles:

Take notice that Julien Chouquette claims title to 640 arpens or acres of land, situate on the Mississippi river, at the junction of the river au Pere with the Mississippi, in the district of St. Louis; which said tract of land said Julien Chouquette actually improved, cultivated, and inhabited from the year 1798 until the year of 1803, and on the 20th day of that year last mentioned, by permission of the proper Spanish officer.

R. EASTON,
Agent for Claimant.

June 27th, 1808.
See record-book D, page 327.

TUESDAY, *October 25th*, 1808.

Board met. Present, the Hon. Clement B. Penrose, Frederick Bates.

Julian Chouquettes, claiming 640 arpens of land, situate on the Mis-

sissippi River, at the junction of the river au Pere with the Mississippi, district of St. Louis, produces to the board a notice of claim to the recorder, dated 27 June, 1808.

Louis Courtois, sen'r, sworn, says that about 15 or 16 years ago claimant built a cabin on the tract claimed, and raised a crop, and inhabited and cultivated the same for one year, and cultivated for 6 or 7 years.

Laid over for decision. Board adjourned.

CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book No. 3, pp. 322, 324, 326.

MONDAY, *June 25th*, 1810.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

399 Julien Chouquette, claiming 640 arpens of land. See book No. 3, p. 324. The board grant to Julian Chouquette the above tract of land, provided it does not exceed 640 arpens, under the 2d section *on a* act of Congress entitled "An act respecting claims to land," and passed the 3d March, 1807, and order that the same be surveyed conformably to his possession.

Board adjourned till to-morrow, 3 o'clock p. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, No. 4, pages 404, 406, and 407.

MONDAY, *June 10th*, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Cer. 904: Julian Chouquette, book 4,406. Survey at expense of claimant. Board adjourned till to-morrow, 8 o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book No. 5, pp. 176, 177, and 181.

RECORDER'S OFFICE,
St. Louis, Missouri, 21st Dec'r, 1839.

The foregoing is truly transcribed from the books of record on file in this office.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

L.

Claim of Gabriel Constant, jr.

Gabriel Constant claims 35 arpens of land, situate in the Territory of Louisiana, granted to him by Zenon Trudeau, the 4th of Sept., 1795.

[NOTE.—In this and in all other cases I omit the original French and Spanish, giving the translation, as made for the report. F. M.]

To Don Zenon Trudeau, captain in the regiment of Louisiana, and lieutenant-governor of the western part of Illinois:

SIR: With the greatest respect, Gabriel Constant, junior, has the honor to represent to you, that being now of age, to form by himself a little establishment which may afford him the means of subsisting from his own labor, and having his father's permission for the same, he wishes to obtain the concession of a tract of land of 35 arpens in superficies, or thereabouts, limited by a bend of the left and north bank of the small river Des Peres, at about one league from the village of Carondelet, the said land being commonly called "Belle Pointe," which, being considered, sir, may you be pleased to grant him the concession in form for the said land. Favor that he hopes from your benevolent generosity.

his
GABRIEL + CONSTANT.
mark.

We, Zenon Trudeau, captain in the regiment of Louisiana, lieut. governor of the western part of Illinois, after having seen the above demand of Gabriel Constant, junior, do concede to him, his heirs, or legal representatives, thirty-five arpens of land, forming the "Belle Pointe" (Favi Bend) of the river Des Peres, bounded by its windings, and by a straight line that shall cross said tract, so as to include the totality of the 35 arpens, on condition by the grantee to cause the land to be surveyed as soon as practicable, to set bounds thereto, and improve it within a year and one day, the same being liable to all public charges that it shall please His Majesty to impose thereon.

ZENON TRUDEAU.

SAINT LOUIS, 4*th September*, 1795.

UPPER LOUISIANA,
District of St. Louis of Illinois:

We, the undersigned, a surveyor commissioned by government, do certify to all those whom it may appertain, that on this day, 15th of April, 1796, we have, at the request of Mr. Gabriel Constant, junior, transported ourself on his land, lying about 3 miles distant from the village of Carondelet, and at a very little distance of the King's road, leading to the Saline. The land of the said proprietor being circumscribed by a bend of the river Des Peres, commonly known by the name of the "Belle Pointe," we have contented ourself to close said land with a line running S. 45° E., which line crosses said river and is at its two extremities, on the bank of the river Des Peres, bounded by a stone with witness of dross of iron.

The area comprised within the contour of the river at this place and the line by us drawn, may contain thirty four or six arpens in superficies, or thereabouts; and in order that the owner may prove it, we have delivered the presents, to be used by him wherever needful.

ANTOINE SOULARD.

ST. LOUIS OF ILLINOIS, *the* 15*th of April*, 1796.

401 M.

Proceed'gs of board on Constant's claim.

FRIDAY, *November* 1*st*, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Gabriel Constant, fils, claiming 35 arpens of land, situated Belle Pointe, near Carondelet, district of St. Louis, produces a concession from Zenon Trudeau, L. G., dated 14th Sept., 1795, a report of survey, dated April 15th, 1796.

It is the opinion of the board that this claim ought not to be confirmed.

Board adjourned till to-morrow, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book No. 5, pp. 386, 393, and 394.

Minutes of the recorder of land-titles, acting as comm'rs under the act of Congress entitled "An act making further provision for settling the claims to land in the Territory of Missouri," passed the 13th day of June, 1812, and other acts subsequently passed.

FREDERICK BATES,
Commissioner.

ST. LOUIS, *December 29th*, 1813.

(B. 461.) Gabriel Constant, claiming 35 arpens of land, Belle Pointe, near Carondelet, produces concession from Zenon Trudeau, lieut. governor, dated 14th Sept., 1795.

Minutes 5, p. 393.

Pierre Villery, duly sworn, says that claimant cultivated the tract during nine consecutive years prior to 1810; that he inhabited the same during one winter, 8 or 9 years ago. This land is about 80 arpens from village of Carondelet, where claimant resides. (Confirmed.)

See Bates's minutes, pp. 1, 120, and 124.

RECORDER'S OFFICE,
St. Louis, Missouri, 23d December, 1839.

The foregoing is truly transcribed from the minutes of record, on file in this office.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

N.

Gabriel Cerre's claim.

"A, No. 25." No. 60. Gabriel Cerré, by his legal representatives, claiming 10 by 40 arpens.

402 To Don Manuel Perez, captain of the regiment of infantry of Louisiana, lieutenant-governor, &c.:

Having examined the contents of the memorial presented by Don Gabriel Cerré, residing in this town of St. Louis, and bearing date the 11th of March, 1789, I granted and *to* grant to him in fee, for him, his heirs and assigns, a tract of land of ten arpens in front by forty in depth, situated on river Gravois, which empties in river Des Peres, at the distance of 2 leagues from this town, and about 8 arpens from the river Mississippi, bounded on every side by the king's domain, under condition to establish and improve the same in the term of one year from this date; on the contrary to remain incorporated *to* the royal domain.

The said land to be subject to the public charges and others which it may please His Majesty to impose.

Given in St. Louis of Illinois, on the 15th day of March, of the year 1789.

MANUEL PEREZ.

Truly translated from Livre Terrien, book No. 4, pages 21 and 22.

JULIUS DE MUN.

ST. LOUIS, *Feb'y* 10, 1833.

Survey of same by Brown, &c.

(For plat, see original, page 145.)

Surveyed a tract of land for Frederick Dent, as then claimant, of which the old bounds were found, or so many as to make the survey sufficiently certain. At all the corners marked with the letter S, I think, were found old corner-stones.

The survey was made, I think, on the 13th February, 1822.

(Signed) JOS. C. BROWN.

MAY 4TH, 1833.

Evidence with reference to minutes and records.

FEBRUARY 8TH, 1833.

F. R. Conway, esq., appeared, pursuant to adjournment, having been authorized by a resolution of the board of commissioners, of the 1st of Dec'r last, to receive evidence. Gabriel Cerré, by his legal representative, Frederick Dent, claiming 10 arpens of land in front by 40 arpens in depth.

See Livre Terrien, No. 4, pages 21 and 22.

For general notice, see record-book F, page 146; for record of concession, see book F, p. 195. Produces a paper purporting to be a certified copy of a concession granted by Manuel Perez, lieut. governor, dated March 15th, 1789.

Pascal Cerré, being duly sworn, saith that he is acquainted with
403 the tract mentioned in the above concession; that it was granted to his father by Manuel Perez in the year 1778; that in the beginning of June, 1789 or 1790, but he rather thinks it was in the year 1789, his father had two ploughs at work on said land, and planted a corn-field, which was not fenced in; that he had a cabin built, and an orchard planted; that he, said deponent, planted said orchard with his own hands, and had it fenced in, and had grass mowed on said land, and had two hay-stacks made in the enclosure of said orchard; that his father remained in possession until the deponent's mother died, when a division of the property took place, and the said land fell into the deponent's hands; that now he has no kind of interest in said property, having sold the same to Abraham Gallatin; that said land was surveyed by Antoine Soulard, under the Spanish authorities.

See book No. 6, page 98.

MAY 22D, 1833.

F. R. Conway, esq., appeared, pursuant to adjournment.

In the case of Gabriel Cerré, claiming 10 arpens of land in front by 40 in depth, (see page 98 of this book,) the claimant produces a paper,

purporting to be a plat of survey, signed by Jos. C. Brown, and dated February 13th, 1822.

Jos. C. Brown, duly sworn, says that the plat of survey presented by the claimant was executed by him, in conformity to the survey he made of said land, and that what is therein stated is true.

See book No. 6, page 169.

NOVEMBER 8TH, 1833.

The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

Gabriel Cerré, claiming 400 arpens of land.

See pages 98 and 169 of this book, No. 6.

The board are unanimously of opinion that this claim ought to be confirmed to said Gabriel Cerré, or his legal repre's, according to the concession.

L. F. LINN.
F. R. CONWAY.
A. G. HARRISON.

See p. 308, book No. 6.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
November 10th, 1836.

I certify that the foregoing mentioned and described tract of land, of four hundred arpens, in the name of Gabriel Cerré, claimed by Frederick Dent, was recommended for confirmation by the late board of com-
404 missioners, decision No. 60, and that the same is duly confirmed by the act of Congress entitled "An act for confirming claims to land in the State of Missouri, and for other purposes," approved the 4th July, 1836.

F. R. CONWAY,
Recorder of Land-Titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Pub. Lands, St. Louis, Missouri.

Compar'on on the situat'ns by Brown of the Cerré claim.

(For plat, marked "O," see original, page 147.)

SURVEYOR'S OFFICE, *St. Louis, 15th April*, 1840.

The above lines drawn with black ink represent the plat of the survey of 400 arpens of land, as executed by Jos. C. Brown, deputy surveyor, in his private capacity, in the year 1822, certified by him in 1833, and presented to the late board of commissioners, and reported with their decision, No. 60, the most northern, the most southern, and the most western corners of the main body of this survey, and the most eastern corner of the adjection, are the corners marked with the letter S in the copy furnished this office by the recorder of land-titles, and are, therefore, those at which Mr. Brown thinks old corner-stones were found. To show the departure of this plat from the requirements of the concession, (10 by 40 arpens,) I have dotted above with black ink (*a b*, *b c*, *c d*, and *d a*,) a tract of that form conforming to the S. W. and a part of *of* N. W. boundary-lines of Mr. Brown's survey. I have also, as near as practicable, laid down the survey by red dotted lines, (*e f*, *f g*, and *h e*,) as run out under the confirmation, and numbered 3,067 on the connected plat.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Ills. and Mo.

"A, No. 26." P.

Pierre Delor's claim, survey, &c.

Pre. Delor de Treget to Frederick Bates, esq., recorder of land-claims:

SIR: Please to take notice that I claim 400 arpens, as per the within concession.

St. Louis, Nov'r 27th, 1812.

his
PIERRE DELOR + DE TREGET.
mark.

Witness:
M. P. LEDUC.

See book F, p. 96.

405 No. 121.

Pierre Delor, claiming 400 arpens.

To Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant-governor and commander-in-chief of the western part of Illinois:

Pierre Delor, captain commanding the militia of the village of Carondelet, supplicates very humbly, and has the honor to represent to you that he would wish to make an establishment near the river aux Gravois, on the road leading from St. Louis et le village de Carondelet to the saline of the Meramec, and having found a place corresponding to his wishes, he claims of your goodness that you will grant to him the concession of the said place, having ten arpens in front by 40 arpens in depth, the said tract being situated at a turn of the said river aux Gravois, on the side of the village of Carondelet, which turn runs for the space of about 10 arpens from east to west, and 40 arpens from north to south. The petitioner, desiring to secure to himself the property of the said tract, has recourse to your goodness, praying that you will be pleased to grant the concession and secure to him the property of the same, by giving him titles in due form, in order that he may with security make thereon the improvements required, according to custom, as he wishes to begin work as soon as you will please grant him the concession.

This considered, may you be pleased, sir, to grant to him the aforesaid concession of 10 arpens in front by 40 arpens in depth, such as it is here above designated.

The petitioner shall never cease to pray Heaven for your conservation.

his
PIERRE + DELOR.
mark.

ST. LOUIS, *Dec'r 6th*, 1796.

The surveyor of this jurisdiction shall put Mr. Delor de Treget in possession of the land which he asks, in the place and in the shape designated, provided it belongs to the king's domain, and is not prejudicial to any other concession heretofore granted.

ZENON TRUDEAU.

Truly translated.

JULIUS DE MUNN.

ST. LOUIS, *May 24th*, 1833.

(For plat, see original, page 149.)

By request, surveyed for Target Delor. According to his showing, an old concession of 10 by 40 arpens, beginning at the northeast
406 corner; thence N. 82 W. 18 chs. 50 lks. to the creek, 29 chs. 20 l., set post the N. W. corner; thence S. 8 W., 4 chs. to the creek, 117 chs. to the S. W. corner; thence S. 82 E., 29 chs. 20 l. to a post, the S. E. corner; thence N. 8 E., 117 chs. to the beginning, and for connections with public lines; thence N. 32 E., 22 chs. to a qr. sec. corner, in the S. boundary of sec. 24, in T 44 N., and R. 6 east.

JOS. C. BROWN.

MAY, 1821.

Evidence with reference to minutes and records.

APRIL 12TH, 1833.

The board met pursuant to adjournment.

Present, F. R. Conway, A. G. Harrison, commissioners.

Pierre Delor, claiming 10 arpens of land in front by 40 arpens in depth, on the river aux Gravois, a special location. (See record-book F, p. 96; Bates's decision, No. 5, p. 102.) Produces a paper purporting to be an original concession from Zenon Trudeau, dated 6th December, 1796; also a plat of survey dated May, 1821, by Jos. C. Brown.

John Boli, duly sworn, says that he was present when Jos. C. Brown surveyed a tract of land for Pierre Delor, on river aux Gravois; that near the main road he was several times shown a tree, said to be the corners of said land, as before surveyed, and that in running the lines he saw trees marked with old blazes, and he heard, of said Delor and others, that these old lines were run by Bouvet, who was commissioned surveyor at the date of the concession; that said Delor was a Spanish officer, and acted as commandant at his father's decease, and he (the deponent) served under him.

See book No. 6, page 154.

APRIL 17TH, 1833.

The board met pursuant to adjournment.

Present, A. G. Harrison, F. R. Conway, commissioners.

In the case of Pierre Delor, claiming 10 by 40 arpens of land. (See p. 154 of this book.)

Joseph C. Brown, duly sworn, says that he made the survey of the land above mentioned; that John Boli was along with several other neighbors for the purpose, he thinks, of showing the land as claimed by the proprietor.

(See book No. 6, p. 156.)

NOV. 13TH, 1833.

The board met pursuant to adjournment.

Present, L. F. Linn, A. G. Harrison, F. R. Conway, comm'rs.

Pierre Delor, claiming 400 arpens of land.

See p. 156 of this book.

407 The board are unanimously of opinion this claim ought to be confirmed to the said Pierre Delor, or to his legal reps., according to the concession.

A. G. HARRISON.
L. F. LINN.
F. R. CONWAY.

See book No. 6, page 325.

RECORDER'S OFFICE,
St. Louis, Missouri, 19th Dec'r, 1839.

I certify that the foregoing mentioned and described claim to a tract of land of 400 arpens, in the name of Pierre Delor, or his legal reps., was recommended for confirmation by the late board of comm'rs, decision No. 121, and that the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

To WM. MILBURN, esq.,
Surveyor-General of Ills. and Mo., St. Louis.

"A, No. 27." Q.

J. B. Martigny's claim.

No. 170. Jean Baptiste Martigny, claiming 12 arpens front.

Don Francisco Cruzat, lieut. colonel of infantry by brevet, commander-in-chief and lieut. gov. of the western part and district of Ills.:

Having taken cognizance of the memorial dated April 23d, of this current year, presented by Don Juan Baptiste Martigny, captain of malitia in this town of St. Louis, I have granted to the said Don Juan Baptiste Martigny, in fee-simple, for him, his heirs, or others who may represent his right, the twelve arpens from hill to hill, in front, in order that he may raise cattle, as he solicits, on the borders of the Mississippi, on the river called Decadre, on condition to improve the plantation he asks for, and to be liable to public taxes, and others which it may please his Majesty to impose; and on the contrary, the land shall be incorporated to the royal domain.

Given in St. Louis, April 25th, 1783.

FRANCIS CRUZAT.
JULIUS DE MUN.

Truly translated from Livre Terrien, No. 4, p. 7.
ST. LOUIS, *August 3d*, 1833.

408 Evidence with reference to minutes and records.

JULY 8TH, 1833.

L. F. Linn, esq., appeared pursuant to adjournment.

Jean Baptiste Martigny, by his legal representatives, claiming twelve arpens in front, (a special location,) by the ordinary depth.

See book F, p. 191.

Recorder's minutes, p. 151, Livre Terrien No. 4, p. 7.

Peter Chouteau, sen., duly sworn, says that said Martigny had a house on said land, and lived there 4 or 5 years; that he had a cornfield and garden, and had the place under cultivation till he sold it.

See minutes, No. 6, p. 219.

OCT. 14TH, 1834.

The board met pursuant to adjournment. Present, F. R. Conway, J. S. Mayfield, and J. H. Relfe, commissioners.

Jean Baptiste Martigny, claiming 12 arpens of land in front.

See book No. 6, p. 219.

The board are unanimously of opinion that this claim ought to be confirmed to the said Jean Baptiste Martigny, or to his legal reps., according to the concession.

JAMES S. MAYFIELD.
JAMES H. RELFE.
F. R. CONWAY.

See book No. 7, p. 37.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
May 1st, 1837.

I certify that the foregoing mentioned and described tract of land of 12 arpens front, in the name of Jean Baptiste Martigny, was recommended for confirmation by the late board of comm'rs, decision No. 170, and that the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Public Lands, St. Louis, Missouri.

409 "A No. 27." R.

Sophia Bolage's claim.

No. 279. Sophia Bolage, claiming 150 acres.

To Don Zenon Trudeau, lieut.-col. of the stationary regiment of Louisiana, lieut.-gov'r and commander-in-chief of the western part of Ills.:

SIR: Sophia Bolage, residing in the village of Carondelet, has the honor to represent that she had begun to clear a piece of land in order to build a house and make a plantation on a tract situated on river aux Gravois, between Maramec and the village of St. Louis; that she had all the timber prepared for a house, and even began a field, but having been frighte'd by the reports which have gone abroad of the bad intentions of the Indians, she then retired with her family to the village of Carondelet. Now she would wish to return and settle with her family upon the said plantation; therefore she claims of your goodness that you will please grant her a concession of 10 arpens in front at the distance of half a league from the junction of said river aux Gravois with river Des Peres; the said ten arpens ascending in a straight line, five arpens on each side the said river aux Gravois, the length of 15 arpens, which will make the quantity of one hundred and fifty arpens of land in superficie. She only waits for your decision in order to go and settle herself on said place, and to work thereon with security, and continue the improvements already begun.

This being considered, may it please you, sir, to grant the petitioner, at the distance of half a league from the mouth of said river aux Gravois, the quantity of ten arpens, five on each side of said river, by 15 in depth, in ascending the said river in a straight line.

The petitioner shall never cease to pray for your conservation.

her
SOPHIA + BOLAGE.
mark.
(Not knowing how to sign.)

ST. LOUIS, 28*th June*, 1796.

ST. LOUIS, *June 3d*, 1796.

In case that the land asked for belongs to the king's domain, the surveyor of this jurisdiction shall put the petitioner in possession of the quantity of arpens she asks, in the manner designated, in order to deliver to her the concession in form, after the plat and certificate of survey are made out.

TRADEAU.

ST. LOUIS, *May 25th*, 1835.

Truly translated from the original, filed before the board of comm'rs.

JULIUS DE MUN, *T. B. C.*

410 Evidence with reference to minutes and records.

MAY 14*th*, 1835.

The board met pursuant to adjournment. Present, F. R. Conway, J. H. Relfe, commissioners. Sophia Bolage, claiming 150 arpens of land, situate on river Gravois. See record-book E, p. 327; Bates's decisions, p. 91.

Produces a paper purporting to be an original concession from Zenon Trudeau, dated 3d June, 1796; also the deposition of Philip Fine, taken the 13th August, 1819, before Joseph Charless, J. P.

M. P. Leduc, duly sworn, says that the signature to the concession or order of survey is in the proper handwriting of the said Trudeau.

TERRITORY OF MISSOURI,
County of St. Louis:

Philip Fine, of the township of St. Louis, in said county, being duly sworn, upon his oath declares and says that he well knows the tract described in the annexed petition of Sophia Bolage, and has known it for at least 40 years past; and that Sophia Bolage about 30 years ago opened the ground, planted corn and potatoes, and built a house on said tract.

his
PHILIP + FINE.
mark.

Sworn to and subscribed this 13th day of August, 1819, before me, a justice of the peace in and for the county aforesaid.

JOSEPH CHARLESS, *J. P.*

See book No. 7, p. 152.

JUNE 10*th*, 1835.

The board met pursuant to adjournment.
Present, J. H. Relfe, F. R. Conway, comm'rs.
Sophia Bolage, claiming 150 arpens of land.
See book No. 7, p. 152.
The board are of opinion that this claim ought to be confirmed to the said Sophia Bolage, or to her legal reps., provided the land belonged to the domain at the date of the concession.

JAMES H. RELFE.
F. R. CONWAY.

See book No. 7, p. 167.

I have examined the transcript of the above claim, and concur in the decision.

F. H. MARTIN.

411 RECORDER'S OFFICE,
St. Louis, Missouri, March 20th, 1837.

I certify that the foregoing mentioned and described tract of land of 150 arpens, in the name of Sophia Bolage, now claimed by her legal representatives, was recommended for confirmation by the late board of commissioners, decision No. 279, and the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

To DAVID DUNKLIN, Esq.,
U. S. Surveyor of Pub. Lands,
St. Louis Missouri.

"A, No. 28." S.

Eugenio Alvarez's claim.

Eugenio Alvarez claims to hold 640 arpens of land, situate on the river Des Peres, in the district of St. Louis, by virtue of concession to him granted by Zenon Trudeau on the 18th day of Nov. 1796, and recorded on a book *November* 1, folio 28 and 29, lodged in the office of the recorder of land-claims, by virtue of having actually inhabited and cultivated said concession.

St. Louis, August 12th, 1807.

EUG'E ALVAREZ.

See book C, p. 508.

STATEMENT.—Eugenio Alvarez claims 640 arpens of land, situate on river Des Peres, district of St. Louis, by virtue of a concession granted to him by Zenon Trudeau Nov. 18th, 1796.

Petition.

To the lieutenant-governor, Eugene Alvarez, a citizen residing in this town of St. Louis, with due respect, and in the best form that may be, has the honor to state that, wishing to establish an habitation for the purpose of raising cattle and occupying himself in agriculture, he wants to have the quantity of land needed for his projects. Therefore he humbly supplicates your lordship to grant to him *a* fee-simple, the vacant land lying from the limits of the land of Carondelet to those of Mr. Reilhe, which he thinks will be about six arpens in front, facing the river Des Peres, by 40 in depth, and on the opposite side of said river
412 ten arpens wide, departing from the same limits of Carondelet and ending at the lands of the domain. The whole not to be prejudicial to anybody. Said land to remain subject to all the charges decreed by law. Favor that the petitioner hopes to deserve from your justice.

Saint Louis of Illinois, 15th of November, 1796.

EUGENE ALVAREZ.

Decree of concession.

ST. LOUIS, 18*th Nov.*, 1796.

The surveyor, Don Ant'e Soulard, shall establish the petitioner upon

the land asked for, and subsequently thereto he shall execute the survey of said land, in order that the title in form of the concession thereof may be expedited.

ZENON TRUDEAU.

Registered in the book of petitions, decrees, and titles of concessions, No. 1, fos. 28 and 29.

SOULARD.

T.

Proceed'gs of board on Eugenio Alvarez's claim.

WEDNESDAY, *August 8th*, 1810.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

On special application of Eugenio Alvarez, and he having shown sufficient cause, he is permitted to introduce testimony in the following claim, to wit, Eugenio Alvarez claiming 640 arpens of land, situate on the river Des Peres, in the district of St. Louis, produces to the board a concession from Don Zenon Trudeau, lieut. governor, to the said Alvarez dated the 18th November, 1796, for a certain space between the establishment of Carondelet and that of Mr. Reilhe, estimated to be six arpens in front and 40 arpens in depth, and on the opposite of the river 10 arpens in front and forty in depth.

Jean Baptiste Chatillon, being duly sworn, says that in the year 1798 or 1799, he (witness) built a cabin and enclosed about three arpens of land, for the claimant, and that claimant sowed tobacco-seed in the month of April of the same year on the land claimed.

Alexander Grimeau, being also duly sworn, says that claimant inhabited and cultivated the land claimed in 1798 or 1799; that he, the deponent, was sent at that time by the lieut. governor, Zenon Trudeau, to inform said Alvarez, who was then inhabiting said land, that he had been appointed keeper of the public stores, and required him to remove to St. Louis and attend to his said office.

The board order that this claim be surveyed conformably to the
413 above-mentioned concession, and that the survey be returned within 15 days from this day.

Board adjourned till to-morrow, 3 o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes, book No. 4, pages 458 and 459.

MONDAY, *January 6th*, 1812.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Cer. 1,339. Eugenio Alvarez. See book No. 4, page 458.

The board confirm to Eugenio Alvarez four hundred and sixty-two acres one hundred and twenty-nine perches of land, as described in a plat of survey returned by Silas Bent, principal deputy surveyor, dated 22d and 23d of Nov., 1811, on file with the recorder.

Board adjourned till Thursday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book No. 5, pages 553, 554, and 555.

RECORDER'S OFFICE,
St. Louis, Missouri, 23 Dec. 1839.

The foregoing is truly transcribed from the minutes of the proceedings of the board of commissioners for ascertaining and adjusting the titles and claims to lands, as now appears of record in this office.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

E. Alvarez's claim surveyed by Russell.

(For plat marked "U," see original, page 155)

Eugenio Alvarez. Surveyed as represented by the above plat, situate in the district of St. Louis, Territory of Louisiana, on river Des Peres, (as said river is represented therein,) which river averages 110 $\frac{50}{100}$ links wide; the survey being bounded from M to V by the southern shore thereof; (the land on the opposite and northern shore, said to be claimed under right of Antoine Reylh;) from A to B by the aforesaid land claimed under right of Ant. Reylh; from B to D by public lands or claimant unknown; from D to E, and to F, and to W, by common-field lands of the village of Carondelet; which common-field lands are divided amongst the several individuals possessing the same, by known and marked boundaries, held as individual and not common
414 property, most of which lands, it is said, have not been recorded or claimed before the board of commissioners, though they have been cultivated and possessed by the several individuals, it is said, since the first settlement of the country; the particulars from the best information are therefore stated, without stating whether this line from D to W bound on private claims (when in fact they are not claimed) or on public lands; from W to K by lands claimed by the inhabitants of Carondelet as a common property, the boundary-line of which has been marked apparently about 14 or 15 years ago, to the northern bank of the river Des Peres at H, and no further; from K to L by land said to belong to the heirs of a Widow Boly, though no claim recorded, and is therefore in the same situation of the lands bounding this survey; from D to W, (may be public lands;) from L to M, I presumed, when I made this survey, to be bounded by public lands, but have since been informed that Mr. Sarpy has a claim of considerable size there, with which (if there is such claim) I now presume this survey will interfere, which fact may be ascertained by those who are in possession of the record (if any) of Mr. Sarpy's survey, the garret-window of Mr. Sarpy's mill being N. 38° 30 W. from the sycamore, witness to corner M, and not more than 10 chains distance (at farthest) from that corner, suspecting no interference, having no inducements; and the mill being on the opposite side of the river, the exact distance was not measured to the mill, and the course taken without any particular motive.

No former lines were discovered by me south of the river Des Peres.

The above survey was begun on the 22d and finished an the 23d day of November, 1811, in pursuance of the several orders of the board of comm'rs to that effect.

The compass adjusted to the true meridian; the chain (as nearly as practicable) carried horizontal by George Shoultz and Jacob Brennet, sworn chain-carriers; pla'ted to a scale of 40 chains (equal to 180 perches) to an inch.

Field-notes, to wit: Beginning at a stone corner at the root of a white-oak tree, 27 inches in dia., marked on the east side ll A, being

on the bank of a spring-branch, and 87 links N. E. from the river Des Peres, at the place called Morgan's ford; which stone and white-oak tree (to wit,) at corner A, is said to be the boundary-line of a tract of land originally claimed by Ante. Reyth, witness-stations, to wit, a large spring N. 46° 15 W. 67 links; white oak 28 inches in dia., N. 17 E. 85 links; thence from the said place of beginning (as described) N. 35 E. 15.00 links to a stone on the aforesaid Reyhl's, marked line 25.00 links to the bottom of a deep cinque-hole; 26.20 links to a white oak 23 inches in dia.; 34.64 links to a white oak 21 inches in dia. To this station the land is not rich, and very much broken with cinque-holes; has been tolerably well timbered with white oak, black oak, post oak,
415 black-jack, and hickory, a few of which yet remains, 45.20 l. to a white oak 41 inches in dia.; 69.76 to the top of a ridge timbered with a few scattering shrubby hickories and post-oaks; land of tolerable second-rate quality, (admitting three qualities of high land.) To this section the aforesaid line of Reilh is remarkably well marked, in part with stones, and on trees, where any are near the line, which marks on trees appear to have been made at least 15 years ago, 115.50 links to a stone, corner at B. Rielh's marked line found until within 40.00 links of this corner. Witness-trees, a persimmon-tree 2½ inches in diameter, S. 41 E., 200 links, marked on S. side E.; a black-jack ten inches in dia., N. 45° 40′ E., 170 links; land inferior to 2d quality; timber, a few scattering shrubby post-oaks, bla'k-jacks and hickories. Thence S. 55° E., 3.91 to a stone, corner at D on rear line of common-field lands of Carondelet village, being on the rear part of the lot of Gabriel Constant, sen'r, in said field; witness-trees, the said aforesaid persimmon-tree 2½ inches in dia., N. 68.30 W., 20.5 links, and the same last aforesaid black-jack 10 inches in diameter, N. 33.15 W., 3.70 links. Thence S. 15.30 W., with the rear line of Carondelet common field 7.47 links to a stone, 11.60 links to a stone, 15.75 links to a stone, corner at E.; thence S. 26 10 W. 17.50 links to a stone, corner at F.; thence S. 35 40 W., (still with the rear line of said fields as marked with stones,) 26.10 to a stone, at W. From D to W there is but very few scattering shrubs of timber; land is tolerably second quality of high land, (it is said one arpent and a half southward of this station at W is a part of the common-field lands, and owned by a Widow Roandat, the rear southward corner of which is not to be found, from the place of which corner, or where it ought to be, commences a tract of land claimed by the inhabitants of Carondelet as a common property,) 84.60 links to a stone H, on the bank of the river Des Peres; land lightly timbered with remnant of black oak, white oak, post-oak, black-jack, and hickory; not rich, and broken with cinques in part, and in part inclinable to be wet and spouty, 89.60 links to a stone, now set on the south bank of the river Des Peres at I, the river being 109 links wide, 96.69 links to top of first rising ground; timber from river to this station Spanish oak, elm, lynn, ash, and hickory; 209.63 links, to a stone, corner at K, about 200 links N. of a small fork of Grave Creek; witness-trees, white oak 30 inches in dia., S. 57 E. 32 links, another white oak 30 inches in dia., N. 37 10 W. 80 links from last station, on top of fine rising ground; S. of river at a distance of 14 chs. towards this course is open, level, and tolerably rich highland prairie; the land then becomes poor, and somewhat broken with drains and cinques, with some few scattering shrubs of white oak, hickory, and black-jack, and
continuing so until within 10.00 links of the present corner at K,
416 which last 10.00 links is some better timber, Spanish oak, black oak, white oak, &c., the drains emptying into Grave Creek. Tho'

the inhabitants of Carondelet claim to this line as the boundary of their common, no ancient mark like a line has been found, any further than to H. Their claim extends, it is said, considerably further to the southward (in the direction of this line) than this corner at K; thence N. 45 20 W., 15.20 links to a white oak 10 inches in dia., 29.13 links to a stone, corner at L; witness-trees, white oak 17 inches in diameter, S. 52 W., 13 links; black oak 9 inches in dia. marked EA, N. 43 E., 151 links; land on this line not rich, lightly timbered with white oak, black oak, black-jack, post-oak, and hickory. Thence N. 35 40, E. 170 links to hickory 4 inches in dia., 29.00 links, to a stone on S. hill-side; 39.79 links to hickory 4 inches in dia., 51.50 links to the top of a ridge, 90.00 links to a stone on a flat of high land, 100.47 links to a stone, corner at M, on the S. bank of the river Des Peres; witness-trees, blue ash 9 inches in dia., N. 14 E., 34 lks., sycamore 18 inches in dia., N. 65 E., 31 links. The land from L to M is mostly poor, and broken with cinques and drains, timbered with a few shrubby post-oaks, black-jacks, and hickories. Thence down the meanders of the river Des Peres, on the S. E. bank thereof, as follows: S. 45 20 E., 8.20 links to N.; N. 70 E., 3.00 links to P; N. 18 E., 8.50 links to R; N. 34 E., 7.00 links to S.; S. 63 E., 6.00 links to T; N. 85 40 E., 7.00 links to a double elm at V; witness-tree, scyamore 36 inches in dia., S. 1 30 E., 20 links, marked FA. Thence N. 35 E., 1.89 links, to the white oak and stone, beginning corner, at A, crossing the river Des Peres, which is 112 links wide.

The river as meandered is tolerably rich land, bottom narrow, perhaps in no place exceeding six chains wide, timbered with sycamore, Spanish oak, ash, elm, lynn, red-bud, &c.; undergrowth, briers and grapevines.

Which survey contains four hundred and sixty-two acres twelve and a half perches, one hundred and twenty acres 147½ perches of which lies on the northeastward side of the river Des Peres, three hundred and forty acres and nine perches on the southwestward side of that river, and one acre sixteen perches of the river des Peres itself, which is included within the survey.

Nov'r 24th, 1811.

WILLIAM RUSSELL, *D.S.*

Examined and approved.

SILAS BENT, *S. D. S.*

Old Spanish survey.

(For plat, marked, " V," see original, page 158.)

Colgan claim under Valle.

John Collgan, as assignee of Jean Baptiste Royol, exr. and admr. to the estate of Carlos Valle, dec'd, claims to hold under the 2d section of the act of Congress, arpens of land, situate on the river aux Gravois, district of St. Louis.

417 To Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lt.-governor and commander-in-chief of Illinois:

SIR: The petitioner has the honor to state to you that two years ago he had formed an establishment on river Gravois; therefore he prays you to be pleased to grant to him 15 arpens wide for 40 deep; the limit thereof to be taken at the limit of the village of Carondelet. The petitioner dares to hope that you will accede to his demand.

He shall never cease to pray for your welfare.

St. Louis, the 11th April, 1797.

CHARLES VALLE.

The surveyor of this district shall put the petitioner in possession of four hundred arpens of land in superficie, at the place where he asks, as far as it is vacant, and the conceding thereof is not prejudicial to anybody.

ZENON TRUDEAU.

ST. LOUIS, 11*th of April*, 1797.

Survey.

NOTE TO SURVEY.—Bounds were set to the four corners and posts on the lines at the distance of 20 arpens between each respectively. They all shown on the above plat. All the trees on the lines were marked with one blaze above two notches, and the trees on both sides of the lines were blazed only.

Registered in book B of the surveys for said post, (St. Louis,) folio 12, No. 16.

UPPER LOUISIANA,
District of St. Louis of Illinois:

I, Don Antonio Soulard, special surveyor of Upper Louisiana, do certify that a tract of 413 arpens of land was, in presence and in favor of Charles Valle, measured and bounded *measured and bounded* with the perch of the city of Paris, eighteen feet of the same in length, agreeably to the author of surveying lands in this province. The land is situated upon the river named Gravois, distant nine miles (in the S. W.) from St. Louis, bounded on the N. N. E. & S. S. E. by vacant lands of the royal domain, and on the S. S. W. and W. N. W. by lands belonging to Peter Didier; said survey and measurement were executed without regard to the variation of the needle, which is 7 degrees and 30 minutes east, as appears from the foregoing plat on which the lengths and courses of the lines and other limits, &c., are laid down.

This survey was made in pursuance of the petition (of Charles Valle) and decree thereon of the lieut.-gov., Don Zenon Trudeau, dated the 11th of April, 1797, and in order that it may be available, I do give the present certificate, together with the foregoing plat drawn in
418 conformity with the returns of the deputy surveyor, James Mackay, dated the 17th of April, 1803, who signed the minutes to which I certify, in St. Louis of Ill., the 21st of August, 1803.

ANTONIO SOULARD, *Sp'l Surveyor.*

***Plat** by Brown—"X."*

T. 43 & 44 N., r's 6 & 7 E., of 5th p'l meridian.

(For plat marked X see original, page 160.)

Remarks on Brown's plat by General Milburn.

It will be seen by the plat D that Elias Rector reports the west boundary of the common to be 437.50 chains, which is equal to 150 arpens, whilst the said line, according to Mr. Brown's operations, as represented on this plat, is 473.17 chains, (being 201.36 chains with Alverez's line, and 271.81 ch's beyond Alverez,) which exceeds the 150 arp's by 35.67 ch's, or something more than 12 arpens. The line A B on this plat is drawn 150 arpens from the fields-lands, according to Brown's measure, and cuts off about 1,170 acres.

The copy of the instructions to Mr. Brown, marked "F," shows that he was not required to run the distance of 150 arpens on the W. boundary, but to connect the lines of the common as already surveyed with the adjoining public and private surveys, and if the S. W. corner could not be found, to re-establish it at the intersection of the southern and western boundary-lines. The S. W. corner and the lower corner on the river, also the western and southern boundary-lines, as surveyed by Elias Rector, were easily found and identified by Mr. Brown.

Under the act of Congress of the 26th of May, 1824, supplemental to the law of the 13th June, 1812, the reps. of John B. Gamache, who had been denied a concession south of the common-fields by Gov'r, Trudeau, availed themselves *by* the very liberal practice of the recorder, under the said act of 1824, and claimed a portion of the same land refused by Trudeau as an out-lot adjoining the village of Carondelet, containing 6 arpens in front by 40 in depth, bounded northwardly by the common-field, eastwardly by the Mississippi, (leaving a tow between it and the river,) south by an out-lot claimed by the legal rep's of Gabriel Constant, (Salmond,) sen'r, and west by the land formerly the property of Antoine Reilh, and they proved the land, as above designated, to have been inhabited, cultivated, and possessed as required by the said acts of 1812 and 1824.

This claim of Gamache, under the laws of 1812 and 1824, has been surveyed as represented on this map by black dotted lines.

Under an act of the legislature of the State of Missouri, passed in pursuance of the act of Congress approved the 27th of Jan'y,
419 1831, the corporate authorities of the town of Carondelet laid off into small tracts the land within Brown's survey of the Carondelet common, (except a portion around Jefferson barracks,) and disposed of the same, or the greater part thereof, to private individuals.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

SURVEYOR'S OFFICE, *St. Louis*, 15*th April*, 1840.

Y.

Beverly Allen's argument in reply to Gen'l Milburn.

To Gen'l Wm. Miburn, sur. gen'l of U. S., St. Louis, Mo.:

ST. LOUIS, MO.

In compliance with your letter of 5th Decr., '39, accompanied by copy of letter from the Comm'r of the Gen'l Land-Office, dated 24th Sept'r, '39, and the opinion of the Solic'tor of the Treasury, "in relation to the land embraced in the survey of the Carondelet commons south of the river Des Peres," we now submit for your consideration the information we have collected, and which we think bears on the subject.

The information consists of the following documents, law, and testimony:

1st. The petition of J. B. Gamache, dated 6th Decr., 1796, to Zenon Trudeau, lieut.-gov'r of Upper Louisiana; the order of the lieut.-gov'r thereon, dated 7th of same month, and the certificates of Antoine Soulard, sur.-gen'l of Upper Louisiana, dated 25th Dec'r, 1797, and 18 Feb'y, 1806.

2d. The proceedings of the board of commissioners of land-claims in the claim of the inhabitants of Carondelet to commons.

3d. The act of Congress of 13th June, 1812.

4th. The certificate of confirmation of their claim to commons, issued by U. S. recorder of land-titles at St. Louis, Mo.

5th. The surveys and field-notes of the commons as certified by sur. gen'l, one of which surveys was made in by E. Rector, a deputy sur. of the U. S.; the other by Jos. C. Brown, another dep'y surveyor, in the year 1834.

6. The plats of said surveys.

7. The concession to Eugene Alvarez, dated 18th Nov., 1796, for 64 arpens; proceedings thereon before b'd of comm'rs of land-claims.

8. The concession to Gabriel Coustant, dated 4th Sept., 1795, for 35 arp's, proceedings thereon before b'd of comm'rs of land-claims.

9. The concession to Gabriel Cerré, dated 15th March, 1789, for
420 10 by 40 arp's, and proceedings thereon before b'd of comm'rs of land-claims.

10. The concession to Sophia Bolage, dated 3d June, 1796, for 150 arp's, and proceedings thereon before b'd of comm'rs of land-claims.

11. The claim of Julien Chouquette, for 640 acres, and proceedings thereon before b'd of comm'rs of land-claims.

12. The concession to Pierre Delor, dated 6th Dec'r, 1796, for 10 by 40 arp's, and proceedings thereon before b'd of comm'rs of land-claims.

13. The concession to Jean B. Martigny, dated 25th April, 1783, for 12 arp's, by ordinary depth, and proceedings thereon before b'd of comm'rs of land-claims.

14. The affidavits of Marie P. Leduc, Jos. Charleville, Hyacinth Pigeon, George Shoultz, Peter Delor, Louis Courtois, and Jonah Parke.

On the foregoing documents, law, and testimony the inhabitants of Carondelet would submit the following view of their claim to commons:

The basis of their claim is the order of Zenon Trudeau, on petition of J. B. Gamache.

This order is dated 7th Dec'r, 1796. Gamache asks in his petition for a tract of land, &c. The lieut.-gov'r, Trudeau, says, in the order on that petition, "that the land asked for is included in what has been reserved for the supply of the necessary wood to the village of Carondelet, and the demand made by Gamache cannot take place, as also all concessions granted in the direction of the line taken at the end of the lands of the said village, and running parallel with the Mississippi, 150 arpens lower down."

It is supposed and insisted that by "the lands of the said village" is meant their common-fields.

It appears from the official certificate of Soulard, sur.-gen'l of Upper Lou'a, dated 25th Dec'r, 1797, that this line of one hundred and fifty arpens had been attempted to be run, and was run, commencing from the lands of the villagers, south to the river Des Peres, and there the survey was arrested. The words of the official certif'e do not convey the idea that the river was the end of the line, but that he surveyed no further southward. The certificate of the surveyor is, that the inhabitants were enjoined to make known the line of a tract of land which had been granted to them, under date of 7th December, 1796; that they have agreed to have their line drawn to be taken from, &c.; then proceeds with this language: "Having ascertained the courses of the same lands, I found that their courses were S. 28 W. I followed the same courses 23 arpens 3½ perches, at which distance I found the river Des Peres; the end of the line on the border of said river has been marked," &c.

421 This language shows that the 150 arpens were not run as required in the order of 7th Dec'r, 1796, and that the marking the

line on the river was merely to show where it struck the river; and in confirmation of this, the further certificate of the surveyor, dated 18th Feb'y, 1806, is appealed to, for if the survey mentioned in the first certificate was a full survey of the commons, it would seem to be necessary to have a further survey. The certificate implies a part was yet to be surveyed.

It will be remarked that this petition and order, and these certificates, were filed, recorded in the office of the U. S. recorder, previous to June, 1808.

On 7th June, 1808, the inhabitants of Carondelet lay in their claim to six thousand arpens of land, as commons, adjoining village of Carondelet, by virtue of said order of 7th Dec'r, 1796, before board of comm'rs of land-claims.

The proceedings before the board on this claim closed 2d Jan'y, 1812.

The existence of a common attached to Carondelet is proven by the testimony before them, but there is no evidence of its extent, other than the order of the lieut.-gov'r and the certificates of surveyor aforesaid.

The decision of the comm'rs on this claim was unfavorable. The proceedings of the comm'rs on this claim and their decision were by them reported to Secretary of Treasury, 20th Jan'y, 1812.

See Am. State Papers, Pub. Lands, vol. 2.

Congress, on the 13th of June, 1812, confirmed to the inhabitants of Carondelet their claim to commons.

It may be asked, what claim? Certainly none other than the above, for of no other had Congress any knowledge.

It is not to be supposed they confirmed a claim of which they had no knowledge. Having then by that act confirmed the claim, it must be intended the claim of which notice was given to the b'd of comm'rs as aforesaid, and that claim was to run from the S. W. corner of the common fields parallel with the Mississippi River one hundred and fifty arpens lower down. Pursuant to such confirmation the claim has been surveyed by the U. S. surveyor, and a patent certificate issued by the U. S. recorder of land-titles. In the field-notes of Brown's survey he speaks of the old line of the survey, of stones long set up in the line, and particularly at the S. W. and S. E. corners of the survey.

It is true that the survey includes more than 6,000 arpens; but this can avail nothing, as the courses and distances will, agreeably to a well-established principle of law, control quantity, and unless it can be shown that the courses and distances have not been observed, the right of the inhabitants of Carondelet to the whole survey, it is submitted, cannot be impeached.

422 But it is said by the Solicitor of the Treasury that the six concessions lying within Brown's survey of the common, and south of the river Des Peres, furnish evidence that the land in question (that plat of commons south of river Des Peres) was not regarded by the Spanish officers as parcel of the village commons, because they were all forbidden to grant village commons, and the legal presumption is that they obeyed the instruction, and that, therefore, this land was not a common, but public domain.

The letter of Solicitor of 6th August, 1839.

With due respect to the Solicitor, we submit the following remarks on these six claims, referred to by him.

According to the surveys in the office of the U. S. surveyor, there are only five claims south of the river Des Peres, and within Brown's survey of the commons; perhaps between Alvarez's claim, which adjoins the commons, and is south of the river, or the claim of Gabriel

Constant, which might at first glance be mistaken as lying south of the river Des Peres, is intended as one of the six.

We will, however, show that none of the seven claims named interfere with the right to common south of the river Des Peres.

We observe on the seven claims mentioned as follows:

1st. Eugenio Alvarez. The concession in favor of Alvarez was made on 18th Nov., 1796, nearly one month before Trudeau's grant of commons; of course there was, in this concession to Alvarez, no grant to an individual of part of commons; at date of his concession it was part of the public domain, and so no violation of the law that commons could not be granted to individuals.

This land, however, is without the commons, and being made before the grant of commons, its silence as to commons furnishes no argument against the right and title to the commons.

It may, however, be observed in passing that the U. S. deputy surveyor, who surveyed this claim of Alvarez in 1811, under order of board of comm'rs, says, in his returns, that at that time the inhabitants of Carondelet laid claim to commons south of the river Des Peres.

2. Gabriel Constant. The concession in favor of Constant was made on *on* 4th Sept., 1795, more than one year before the grant of commons, and is, therefore, no evidence that the commons granted one year and more thereafter did not extend south of the river Des Peres.

But this claim is north of the river Des Peres, and would, according to the view of the Solicitor, furnish evidence that the inhabitants of Carondelet had no right to common north of the river Des Peres, which, however, we suppose is not insisted on by him.

This claim of Constant was surveyed in April, 1796, about nine months before the grant of commons.

3d. Gabriel Cerré. The concession in favor of Cerré was made
423 15th March, 1789, and lies south of the river Des Peres, and within the survey of the commons made by Brown.

It will not be pretended that this grant, dated 15th March, 1789, is conclusive or persuasive evidence that land at that date a part of the public domain was not granted as commons on 7th Dec'r, 1796, seven years and eight months subsequent.

A comparison of dates will exclude all conclusion against the right to commons.

4. Sophia Bolage. The concession in favor of Sophia Bolage was made on the third June, 1796. This was six months before the grant of commons, and so no evidence that the commons subsequently granted did not extend south of the river Des Peres.

5. Julien Chouquette. This, so far from being a concession, is a claim under act of Congress of 3d May, 1807, 2d section, and based on actual possession, and was confirmed by com'rs in 1810; thence not within the grounds taken by the Solicitor.

6th. Pierre Delor. The concession in favor of Pierre Delor was made on 6th Dec'r, 1796, the day before the grant of commons. In this concession to Delor, the lieut.-gov'r granting it, who is the same granting the commons, says, "The surveyor of this jurisdiction shall put Mr. Delor de Treget in possession of the land he asks, in the place and in the shape designated, provided it belongs to the king's domain, and is not prejudic'al to any other concession heretofore granted. But were the *the* grant not thus guarded, it being the day before, is the same as if it was the year before.

7th. Jean B. Martigny. The concession in favor of Martigny was made on 25th April, 1783; the date is antecedent to the grant of com-

mons, and so falls within the remarks made on the other claims similarly situated.

In conclusion, we would refer to the several affidavits submitted, which will show the following facts as extracted from each of them:

1. Marie Philip Leduc: That in 1799 the people of Carondelet claimed and used as commons lands north and south of the river Des Peres, and have ever since claimed and used the same as such, and as property in them belonging, and that such right was always recognised under the Spanish government up to the change of the sovereignty of the country.

2. Joseph Charleville: That for the space of 40 years and more, the claims to commons north and south of the river Des Peres has been made, and land north and south of the river have, during all that time, been used by the people of Carondelet on their commons; that said commons was granted by the Spanish gov't, and that previous to the change of gov't a blazed line existed north and south of the river Des Peres, and for about 2 miles south of Jefferson barracks, showing the extent of the commons.

424 3d. Hyacinth Pigeon: That in 1806 commons was claimed north and south of the river De' Peres; that at that time the line south of the river was blazed; that it was then understood and said that the line of the survey was stopped at the river Des Peres on account of high waters; that the blazed line to the whole extent of the commons was then visible, and was followed round by the affiant; that the inhabitants exercised the same right south of the river Des Peres which they did north; that in 1821, when the survey of the commons was made by Mr. Brown, affiant carried the chain and followed exactly the same blazed line shown to affiant in 1806, as far as the S. W. corner of the commons, where they found a corner-stone; thence they continued an east line to the river, where they again found another corner-stone.

4. George Shoultz: That for about 45 years the claim of commons has existed north and south of the river Des Peres, and the north and south line given by Mr. Trudeau extended on south side of the river Des Peres about 127 arpens, and during same period has been exercised in their extent; that it was always considered to extend N. and S. of the river under the grant of Trudeau, (lieut.-gov'r;) that a survey of the commons was commenced by Antoine Soulard, under the Spanish gov't, but not finished on account of high water; that several years after the survey thus begun by Soulard he sent B. Cousin to complete same; that affiant, with others, was employed to assist Mr. Cousin in blazing, carrying chains, &c., and upon fixing compass to make start, the same was found out of order, and survey was therefore not completed.

5. Peter Delor, sen'r: That the claim to commons has existed for about 45 years, and has been used during that period, and that the claim and right extended one hundred and fifty arpens south of the lands of the inhabitants of Carondelet; that is, from the S. W. corner of their common fields, running south and parallel to the Mississippi River 150 arpens, and this under grant from Trudeau.

That a survey of the commons was begun by Mr. Soulard about 43 years ago; affiant was present, and others, (names given.)

They all went to the S. W. corner of the common fields of Carondelet, in order to run the line of the land, or the 150 arpens below, granted by Trudeau, and surveyed the line as far as river Des Peres; having arrived at the river, they were compelled to stop on account of high water, there being no bridge or other way to cross the same, and returned home.

Several years after this Soulard sent one Cousin to continue the sur-

vey, but for reason of compass being out of order, survey was not continued.

6. Louis Courtis: That the claim to commons has existed for about 45 years, and extended N. and S. of river Des Peres, and to this extent the right of commons has been exercised during same 425 period; that the extent of commons was bounded by a line of 150 arpens, granted by Mr. Trudeau, to begin at S. W. corner of common fields of Carondelet, and run parallel to the Mississippi; and that this line would extend about 127 arpens south of the river Des Peres; that a survey of the line so granted by Trudeau was begun under the Spanish government, but was not proceeded on further than the river Des Peres, on account of high water; that several years after, one Mr. Cousins was sent to continue the line, but after hands were obtained to assist in the survey the compass was found to be out of order, and so the same was not finished; that when the survey of Soulard was left unfinished as aforesaid, the inhabitants of Carondelet, by order of lieut.-gov'r, *of* Soulard, continued the line south of the river Des Peres, and blazed same to the extent claimed.

7. Jonah Parke: That in 1808 there was a blazed line, then understood to be the line of the commons of Carondelet, which line extended south of the river Des Peres, and from appearance of blazes must have been made many years before, and during time of the Spanish gov't; that in that year, 1821, a surveyor named Rector run the line of the commons; affiant followed him some distance, as far as S. W. corner of commons, and while together the surveyor followed the old blazed line, and blazed many of the same trees before blazed; that this line runs between 4 and 5 miles south of river Des Peres, and thence to Mississippi River.

We conclude with the observation that this testimony supports the view taken by us of the documentary evidence.

Very respectfully, &c.,

The B'd of Trustees of Town of Carondelet,

By BEVERLY ALLEN.

ST. LOUIS, 12*th February*, 1840.

M. P. Leduc's certificate.

No. 1, (referred to in Doc. Y.)

M. P. Leduc.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, Mary Philip Leduc, resident in the city of St. Louis, in the county of St. Louis, in the State of Missouri, do hereby certify that I am about 68 years of age; that I came in the then Upper Louisiana, now State of Missouri, in the month of Feb'y, 1793, where I resided, except on occasional absence, until this day; that I came to St. Louis in Nov., 1799, where I resided till the day of the date hereof; that the town of Carondelet, in the county aforesaid, was then settled, and that the inhabitants of said town, then the village of Carondelet, lived on town-lots, cultivated their common fields, and used what is now called their commons, north and south of the river Des Peres, 426 for the supply of timber for their fields and village, the mowing of hay and pasture for their cattle; that the said inhabitants have constantly used and claimed the commons aforesaid as their prop-

erty; that from the month of Nov., 1789, until the cession of this country to the U. States, to wit, until the 9th day of March, 1804, I have acted as private secretary of the Spanish lieut.-gov'r Don Carlos Dehault Delassus, in St. Louis, during which period the subject of the Carondelet commons was several times mentioned. The said lieut.-gov'r never objected to the right of the inhabitants of Carondelet to said commons, but, on the contrary, recognised their right to the same; that at the time when Gen'l. Atkinson went down with the troops to the now Jefferson Barracks, south of river Des Peres, I was requested by an officer of the Army to go down to Carondelet to draw an article of agreement between the U. States and the said inhabitants of Carondelet, a deed of release of a portion of their commons south of river Des Peres, with the understanding that so soon as the troops would abandon that ground so released, that the same would revert to said inhabitants, with all the improvements thereon, without paying anything therefor; which said proposition being assented to by said inhabitants, the contract was drawn duplicate, one by an officer of the Army, probably Mr. McRee, and the other by me, and executed.

The reason of my being called upon for such purposes was, as I have *been* insinuated at the time, that my standing with the inhabitants would bring the contract to a sooner determination.

M. P. LEDUC.

Dated St. Louis, Jan'y 27th, 1840.

Testimony of witnesses.

No. 2.

JOSEPH CHARLEVILLE.

Interrogatories propounded to Joseph Charleville, on subject of commons of the inhabitants of Carond'l't:

1. Ques. How old are you?

Ans. I am seventy years old.

2. Ques. How long have you lived in what is now called the State of Missouri, at what time was it you lived in same, and whereabouts?

Ans. I have lived in the State now called Missouri forty-nine years, all of which I have lived in the vicinity of what is now called Carondelet Township; my farm, on which I have resided the last twenty-two years, is about 10 miles from the town of Carondelet.

3d ques. Were you acquainted with the village of Carondelet, and for how long?

Ans. I have been acquainted with the village 49 years.

427 4. Ques. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. Ques. How long have you known of such claim being made by them?

Ans. Forty odd years.

6. Ques. For what purpose was their common used?

Ans. For to mow, firewood, house-building, rails, and whatever purpose the inhabitants wished.

7. Ques. What was the extent of the commons as claimed and used by them?

Ans. I have always known their line to commence at the Sugar Loaf;

there a continuation of said commons extending south of the river Des Peres a southerly course four and a half or five miles; thence to the Mississippi, being about 2 miles below what is now called the Jefferson Barracks.

8. Quest. Do you know that their claim of commons extended south of the river Des Peres?

Ans. Yes, I do; as I have expressed before in my 7th answer.

9. Ques. Do you know of their exercising right of commons south of the river Des Peres, and what mode did they exercise said right?

Ans. They have exercised their right as before stated in my 6th answer.

10. Ques. Do you know their claim of common extended north of the river Des Peres?

Ans. Yes, I do; as before stated, the Sugar Loaf is on the north side of the river Des Peres.

11. Ques. Do you know of their exercising right of commons north of the river Des Peres, and in what mode did they exercise such right?

Ans. I know of their exercising the same right on the north as they have on the south side.

12. Ques. Do you know of any recognition of such claim north and south of the river Des Peres by the Spanish authorities while this country was under the government of Spain?

Ans. Yes, I do know that said commons was given under the Spanish gov't, and many years before this part of the country was ceded to the U. States, for I well remember that there was a blazed line beginning at the Sugar Loaf, and extending, as before expressed, about 2 miles below what is now the Jefferson Barracks.

13. Ques. Do you know of any survey of their claim of commons made or begun under the Spanish gov't, when, and by whom; and if the same was finished, what has become of plat of same, and what lands did it include; and if not finished, why, and all particulars concerning same?

Ans. Not being interested in said commons, I never was present
428 or made any inquiries of said survey or plat; but as for the line and extent of said commons, it was known during the Spanish gover't by a line blazed on the trees, extending as I expressed before in my 12th answer.

14. Ques. Do you know anything more rel. to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I have stated all I know.

JOS. CHARLEVILLE.

ST. LOUIS COUNTY, *Jan'y 18th*, 1840.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the eighteenth day of Jan'y, in the year of our Lord one thousand eight hundred and forty, before me, the subscriber, one of the justices of the peace for the central township, county aforesaid, Joseph Charleville is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing, and acknowledged it to be his act and deed for purposes therein mentioned.

Taken and certified this day and year aforesaid.

LOUIS BOMPART,
Justice of the Peace.

No. 3, (referred to in Doc. Y.)

HYACINTH PEGEON.

Interrogatories propounded to Hyacinth Pegeon by the inhabitants of Carondelet, concerning their commons, on this 11th day of Jan'y, A. D. 1840.

Ques. 1. Mr. Pegeon, how old are you?

Ans. I will be 61 years old on the 3d day of October next.

2. How long have you lived in what is now called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I arrived at what is now called the city of St. Louis, State of Missouri, in the year 1804, and in 1805 I first went to what is now called the town of Carondelet, and in 1806 I became a citizen of the said town of Carondelet, and never left the same town ever since.

3. Do you know anything of commons by the inhabitants of that village?

Ans. Yes, I do.

4. How long have you known of such claim being made by them?

Ans. Ever since I have been here, for I was shown by them the corner-stone of their division between them and the inhabitants of St. Louis, which corner-stone was placed about two miles north of said town, at the place called Sugar Loaf, and in 1832 I saw the same corner-stone there yet.

429 5. For what purpose was the common used?

Ans. The inhabitants of Carondelet used it, as they needed it, for logs, rails, fire-wood, hay, &c., as their own property.

6. What was the extent of the commons claimed by them and used by them?

Ans. As to the north part of said commons—that is, north of the said town—is extended about 2 miles, as far as Sugar Loaf, where, as I before stated, the corner-stone was placed.

7. Do you know that this claim of commons extended south of the river Des Peres?

Ans. Yes, I do. When I first came here, in 1806, I was shown, by the inhabitants of Carondelet, a survey of their common south of said town, began by Antonia Soulard, and made as far as river Des Peres, where said survey had been stopped on account of high waters; the said inhabitants also made me then acquainted with the line of their commons south of river Des Peres, which line was then well blazed, and extended parallel with the river Mississippi about 127 arpens, and which line I myself followed round.

8. Do you know that they exercised right of commons south of river Des Peres; and in what mode did they exercise such right?

Ans. Yes, I do. They used it with the same privilege and use as they did the north part, as their own property, expelling all intruders thereon, in order to avoid all trespass which might have been permitted thereon.

9. Do you know that their claim of commons extended north of the river Des Peres?

Ans. Yes, I do. As before stated, as far as Loaf Sugar, where there existed a dividing line between the commons of St. Louis and the commons of Carondelet.

10. Do you know of their exercising right of commons north of the river Des Peres, and in what mode did they exercise such right?

Ans. With the same power and rights as they did the south of river Des Peres, prohibiting the inhabitants of St. Louis, or any other person, to cross the line, which, as said, was at Loaf Sugar.

11. Do you know anything more relative to the claim of commons claimed by the inhabitants of Carondelet? If so, state all you know.

Ans. Some time in 1821 a survey of said commons was made south of river Des Peres by Mr. Brown, when myself I carried the chain, and we followed exactly the same blazed line shown me in 1806 as far as the S. W. corner of said commons, where we found a corner-stone; from thence we continued an east line to the river, where we again found another corner-stone.

Said survey was made, as I believe, by Mr. Jos. C. Brown, deputy under one Mr. Rector.

430 Given under my hand, at Carondelet, this 11th day of Jan'y, A. D. 1840.

his
HYACINTH + PEGEON.
mark.

Test: L. FASSEN.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this 11th day of Jan'y, in the year of our Lord 1840, before me, the undersigned, one of the justices of the peace within and for the county aforesaid, came Hyacinth Pegeon, who, being by me duly sworn according to law, deposeth and saith that all the foregoing answers by me made and answered are all just and true.

Sworn and subscribed to the day and year before mentioned before me.

JOSEPH LE BLOND, *J. P.*

No. 4, (referred to Doc. Y.)

G. SHOULTZ.

Interrogatories propounded to George Shoultz, sen'r, by request of the inhabitants of Carondelet, relative to their commons, on this 4th day of Jan'y, A. D. 1840.

Quest. 1. Mr. Shoultz, how old are you?

Ans. I think I am 69 years old.

2. How long have you lived in what is now called the State of Mo.; at what time was it you lived in same, and whereabouts?

Ans. I have lived in the State of Missouri, now called, fifty-four years, of which I have lived 49 years in the township now called Carondelet township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. For 52 years ago.

4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long have you known of such claims being made by them?

Ans. About forty-five years ago.

Q. 6. For what purpose was their commons used?

Ans. For to mow, to cut wood for houses, rails, and many other farming necessaries, whatever the said inhabitants wished to disposed of as their own.

Q. 7. What was the extent of the commons, as claimed and used by them?

Ans. As to the north part of the commons, north of said village, I have not an exact knowledge of its extent.

431 8. Do you know that their claim of commons extended south of river Des Peres?

Ans. Yes; I know that the continuation of 150 arpens, granted by Mr. Trudeau, beginning at the S. W. corner of the common-fields of said Carondelet, extended about 127 arpens south of river Des Peres; thence parallel to the Mississippi.

9. Do you know of their exercising rights of commons south of river Des Peres; and in what mode did they exercise such right?

Ans. I do; as I have before stated, to any use they thought proper.

10. Do you know that their claims of commons extended north of river Des Peres?

Ans. Yes, I do.

11. Do you know of their exercising rights of commons north of river Des Peres; and in what mode did they exercise such right?

Ans. I do know of their exercising right of common north of river Des Peres, and, as I before mentioned, in the same mode as they did south of river Des Peres.

12. Do you know of any recognition of such claim north and south of river Des Peres by the Spanish authorities while this country was under the gover't of Spain?

Ans. Yes, I do know that said commons was given by Zenon Trudeau, by the Spanish authorities, under the Spanish government.

13. Do you know of any survey of their claim of common made or begun under the Spanish government; when and by whom; and if the same was finished, what has become of the plat of same, and what did it include; and if not finished, why? And all particulars concerning same.

Ans. I have knowledge of a survey commenced of said commons by Antoine Soulard, under the Spanish gover't, but said survey was not finished on account of the high stage of the waters of river Des Peres, which prevented the surveyor from going any further, and for which reason, I suppose, a plat was not made.

14. Do you know anything more relative to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the first beginning of said survey Mr. Soulard sent one Bartholomew Cozens to come and continue the same survey and when all ready, myself and others to help in carrying the chain—blazing. On placing the compass to make a start, said compass was found deranged, and therefore we were not able again to continue.

his
GEORGE + SHOULTZ, SEN'R.
mark.

Teste: L. FASSEN.
DELPHY CARLIN.

432 STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the 4th day of Jan'y, in the year of our Lord 1840, personally came before me, one of the justices of the peace for the aforesaid county, George Shoultz, sen'r, who, being by me duly

sworn according to law, deposeth and saith that all the foregoing answers by him made and subscribed to are just and true.

Sworn and subscribed to before me the day and year before mentioned.

JOSEPH LE BLOND, *J. P.*

No. 5, (referred to in Document Y.)

PETER DELOR.

Interrogatories propounded to Peter Delor, sen'r, by the inhabitants of Carondelet, on this 9th day of January, 1840, concerning their commons.

Quest. 1. How old are you?

Ans. I will be seventy-two years old on the first day of next February.

2. How long have you lived in what is called at present the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I was born in the town of Carondelet, in the State of Missouri, and always lived in the township now called Carondelet township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. Ever since I was born, for I never left the place.

4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long do you know of such claim being made by them?

Ans. About forty-four or forty-five years ago.

6. For what purpose was the commons used?

Ans. For whatever use the inhabitants thought proper—for to get log houses, rails, hay, and wood for fuel, &c.

7. What was the extent of commons claimed and used by them?

Ans. They claimed north of the river Des Peres, and used as their commons as far as what is called Sugar Loaf, about 2 miles north of the town of Carondelet.

8. Do you know the claim of common extended south of the river Des Peres?

Ans. Yes, I remember that, in the year about 1796, a petition was presented to Mr. Zenon Trudeau by Mr. John B. Gamache
433 and by myself, in behalf of the inhabitants of Carondelet, for a continuation of their land; to which petition Mr. Trudeau made the following reply; that is, that he could not give us the continuation of our land, but, seeing the industry of the people of Carondelet in fencing their field, &c., &c., he would grant them one hundred and fifty arpens further down, beginning at the S. W. line of their common-field and running a direct south course parallel with the river, one hundred and fifty arpens, which was granted as aforesaid by said Zenon Trudeau, under his hand, the same year.

9. Do you know of their exercising right of commons south of the river Des Peres; and in what mode did they exercise such right?

Ans. I do know that they used it as their own, and for whatever use they wished and thought proper.

10. Do you know that their claim extended north of the river Des Peres?

Ans. Yes, I do know that the claim extended north of the river Des

Peres, as far as Sugar Loaf, about two miles north of said town of Carondelet, where there was an east and west line surveyed by Pierre Chouteau, in order to have a division of commons between the inhabitants of St. Louis and Carondelet; which line ran from said Sugar Loaf a west direction to the N. E. corner of the common-field of said Carondelet.

11. Do you know of their exercising right of common north of the river Des Peres; and in what mode did they exercise such right?

Ans. With the same privilege and right as they did the south part of river Des Peres, at their own discretion.

12. Do you know of any requisition of said such claim north and south of the river Des Peres by the Spanish authorities while this country was under the government of Spain?

Ans. Yes, I know that said commons was given unto the inhabitants of Carondelet by the Spanish authorities, and under the Spanish government.

13. Do you know of any survey of this claim of common made or begun under the Spanish government; when and by whom; and if the same is finished, what has become of the plat of the same, and what land did it include round; if not finished, why? And all particulars concerning the same.

Ans. I know of a survey commenced by Antoine Soulard about forty-three years ago, under the Spanish government, where myself I was present, as well as Julien Chouquette, Louis Menard, George Shoultz, sen'r, and Louis Courtois, sen'r, and many others. We all together went to the S. W. corner of the common-field of Carondelet with Mr. Soulard, in order to run the line of the land (or the one hundred and fifty arpens below) granted by Zenon Trudeau, and accordingly surveyed said line a south course as far as river Des Peres; having arrived at said
434 river Des Peres, we were compelled to stop said survey on account of the high waters of the said river Des Peres, there being no bridge, nor no other way to cross the same, and therefore returned home, and suppose no plat thereof was made.

14. Do you know any more relative to the claim of common by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the commencement of the survey made by Antoine Soulard, *that* said Soulard sent one Bartholomew Cousin, in order to continue the said survey, and by reason of said Cozen's compass being out of repairs, the said survey could not be continued. As to the line surveyed by Mr. Pierre Chouteau north of the village of Carondelet, from Sugar Loaf to the N. E. corner of the common-field of Carondelet, I was present and saw said survey made, and same was made under the Spanish government.

Given under my hand at Carondelet this 9th day of January, A. D. 1840.

his
PETER + DELOR, SEN'R.
mark.

Test: L. FASSEN.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this ninth day of January, in the year of our Lord eighteen hundred and forty, personally came before me, the undersigned, one of the justices of the peace for the aforesaid county, Peter Delor, sen'r, who, being by me duly sworn according to law, de-

poseth and saith that all the foregoing answer' by him made and subscribed to are just and true.

Sworn and subscribed to before me the day and year before mentioned.

JOS. LEBLOND, *J. P.*

No. 6, (referred to in Document Y.)

LOUIS COURTOIS, SEN'R.

Interrogatories propounded to Louis Courtois, sen'r, by the inhabitants of Carondelet, on this ninth day of January, A. D. 1840, concerning their commons.

Question. How old are you?

Ans. I am sixty-six years of age.

2. How long have you lived in what is now called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I was born in that State now called the State of Missouri, and always lived in it. I have lived fifty-five years in the township now called Carondelet Township.

435 3. Were you acquainted with the village of Carondelet, and for how long?

Ans. I was, and for fifty-five years ago.

4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long do you know of such claim being made by them?

Ans. About forty-five years ago.

6. For what purpose was this commons used?

Ans. For to mow, to cut wood for houses, rails, and many other farming necessaries, whatever the said inhabitants wished to dispose of as their own.

7. What were the extent of the commons claimed and used by them?

Ans. They claimed and used as their commons from what is called Loaf Sugar, about two miles north of the village of Carondelet, to said village, and to their common-field.

8. Do you know that this claim of commons extended south of the river Des Peres?

Ans. Yes, I know that a continuation of one hundred and fifty arpens was granted by one Mr. Zenon Trudeau, beginning at the S. W. corner of the common-field of said Carondelet, which extended about one hundred and twenty-seven arpens south of the river Des Peres, thence parallel to the Mississippi.

9. Do you know of their exercising right of commons south of the river Des Peres and in what mode did they exercise such right?

Ans. I do, and they used it for hay, wood, &c., as I have stated, for whatever they needed or thought proper.

10. Do you know that their claim of commons extended north of the river Des Peres?

Ans. Yes, I do; as before by me stated, their claim extended as far as what is called Loaf Sugar.

11. Do you know of their exercising right of commons north of the river Des Peres; and in what mode did they exercise such right?

Ans. I do; with the same privilege, and for the same use, as they did south of the river Des Peres.

12. Do you know of any recognition of such claim of common made

north and south of the river Des Peres by the Spanish authorities while this country was under the gov't of Spain?

Ans. Yes, I know that said commons were given them under the Spanish authorities, while the country was yet under the government of Spain, by one Mr. Zenon Trudeau.

13th. Do you know of any survey of the claim of common made or begun under the Spanish government; when and by whom; and if the same was finished, what has become of the plat of same, and what land did it include round; if not finished, why? And all particulars concerning the same.

436 Ans. I have knowledge of a survey commenced of their commons, under the Spanish authorities, about forty-three years ago, by one Antonio Soulard, accompanied by Julien Chouquette, Louis Menard, sen'r, George Shoultz, sen'r, Peter Delor, sen'r, and my father, Louis Courtois, all whom left together my father's house to make a survey of said commons to the river Des Peres, and south thereof. But when arrived at the said river Des Peres, they were compelled to stop said survey on account of the high waters of said river, there being no bridge over said river, or no other means to cross the same; and in default of said continuance then, it is supposed no plat was made.

14. Ques. Do you know anything more relative to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the beginning of the forementioned survey by said Antoine Soulard, *that* one Bartholomew Cousin came by order of said Antoine Soulard to continue the said survey, and when himself and Cousin and several other persons who went to assist said survey got to the river Des Peres, in order to continue the survey begun by said Soulard, then and there being ready to go on and cross said river Des Peres, again said survey was stopped on account of the surveyor's compass being out of order; further I do not know.

15. Ques. Do you know anything of a line of said commons ran and blazed south of river Des Peres un*til* the Spanish government?

Ans. I know that after the survey of Mr. Soulard—that is, by him begun and not finished—that the inhabitants of Carondelet themselves, either by order of Mr. Zenon Trudeau or Antoine Soulard, went and continued running a line south of river Des Peres, and blazed the same to the extent by them claimed.

Given at my hand at Carondelet thi ninth day of Jan'y, A. D. 1840.

his
LOUIS + COURTOIS.
mark.

Test: L. FASSEN

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this ninth day of January, in the year of our Lord eighteen hundred and forty, personally came before me, the undersigned, one of the justices of the peace for the county aforesaid, Louis Courtois, sen'r, who, being by me duly sworn according to law, deposeth and saith that all the foregoing answers by him made and subscribed to are just are true.

437 Sworn and subscribed to before me the day and year before mentioned.

JOS. LEBOND, *J. P.*

No. 7, (referred to in Document Y.)

JONAH PARKE.

Interrogatories propounded to Mr. Jonah Park concerning the commons of the inhabitants of Carondelet.

First. How old are you?

Ans. I am in my fifty-ninth year.

2. Ques. How long have you lived in what is now called the State of Missouri; and at what time was it you have lived in the same, and whereabout?

Ans. I have lived thirty-six years, and of which I have lived thirty-two in the township now called Carondelet Township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. For thirty years.

4. Do you know *of* anything of the commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long have you known such claim being made by them?

Ans. For thirty-two years, and the line must have been run many years before I came to Missouri; because, when I came, there was then a blazed line, called the Carondelet common line, which, from the oldness appearance of the blazes, must have been run many years.

6. For what purposes were the commons used?

Ans. For to mow, to cut wood for rails, house-logs, and any other purpose for common use, and all farming purposes, whatever the said inhabitants wished.

7. What was the extent of the commons as claimed and used by them?

Ans. I have never seen a plat of said commons; but on the year one thousand eight hundred and twenty-one, one of the Messrs. Rector ran the line of said commons. I followed the surveyors some distance, and when I was along they run the old blazed line I refer to in my fifth answer, for the surveyors blazed many of the same trees that had been before blazed. From information any my own knowledge, I think the said line runs a south course between four and five miles south of the river Des Peres; thence three miles to the Mississippi.

8. Do you know that their claims of the commons extended south of the river Des Peres?

Ans. Yes, as before expressed.

438 9. Do you know of their exercising rights of commons south of the river Des Peres; and on what mode did they exercise such rights?

Ans. As before expressed.

10. Do you know that their claim of the commons extended north of the river Des Peres?

Ans. I know they have.

11. Do you know of their exercising rights of commons north of the river Des Peres; and in what mode did they exercise such right?

Ans. Yes, as before expressed in my sixth answer.

12. Do you know of any recognition of such claim north and south of the river Des Peres by the Spanish authorities while the country was under the government of Spain?

Ans. I came to live where I now reside in the year one thousand

eight hundred and eight, and when I came the lines of the commons before expressed was run and blazed, and from the appearance of the blazes on the trees it must have been done during the Spanish gov't.

13. Do you know of any survey of the claims of the commons made or begun under the Spanish government; when and by whom; and if the same was finished, what has become of the plat of same, and what lands did it include; and if not finished, why? And all particulars concerning same.

Ans. As before expressed, I came to this State in the year one thousand eight hundred and four, one year after the Spanish government and, as before stated, the line of the commons must have been run under the Spanish government; that, as before mentioned, when Rector ran the line I went with him as far as the south line ran; that he ran as far as the old blazes, and I can now show where the S. W. corner of said line is or was then established.

14. Do you know anything more relative to the claim of the commons by the 'nhabitants of Carondelet? If so, state all you know.

Ans. I have stated all I know.

In testimony whereof I have hereunto set my hand and seal this eighth day of January, 1840.

JONAH PARKE.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this eight' day of January, eighteen hundred and forty, before me, Zeno Mackay, a justice of the peace in and for the township of Carondelet, county of St. Louis, personally came Jonah Parke, who, upon his oath, acknowledges the foregoing to be his act and answer to the interrogatories therein mentioned, to the best of his knowledge.

Sworn to and subscribed the day and year aforesaid.

ZENO MACKAY,
Justice of the Peace.

439 *Instr's of Com'r Whitcomb to Sur. Gen'l Milburn.*

"A, No. 19." GENERAL LAND-OFFICE,
Jan'y 20th, 1841.

SIR: In relation to the claim of the village of Carondelet, in Missouri, to a tract of land called the common of that village, within which the military post of Jefferson Barracks is situated, I herewith enclose for your information a copy of report No. 300 of Solicitor McRoberts, and a copy of a communication of the 18th Nov. last from the Secretary of War, with a copy of his letter of the 16th of the same month to Brigadier-Gen'l Atkinson, at Jefferson Barracks.

You will perceive that the Solicitor advises "that the tract of land beginning on the Mississippi River at the figure laid down upon plat X, (which plat accompanied your report of the 15th April last,) and near the northeast corner of Martigny's survey; thence with the black dotted line to d; thence with said line to the river Des Peres, and up the river to the line of Alvarez's survey, and across the river to letter e, and from said letter e to c, and on to the river with the present survey, be reserved for the future action of Congress;" and remarks that, by making this reserve, Congress can grant the 6,000 arpens, (all the inhabitants claimed, which 5,104.20 acres, excluding all private claims,) to the village of Carondelet for a common, or in such manner as may be deemed

proper, and can retain of the public land 1,702 acres as a site for Jefferson Barracks, or for any disposition that may be judged expedient. He further advises "that the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys, and which amounts to several thousand acres, be reserved and sold as public land."

Concurring in this report, I have addressed a communication to the Hon. Secretary of the Treasury, with a view of having the matter brought to the attention of Congress, for such action as may be deemed proper in the way of making a grant to the village of Carondelet, &c.

In the mean time, you are requested to represent on your records the tract within the limits suggested by the Solicitor, and referred to in the foregoing as lands reserved for the purpose alluded to, and "the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys," you are instructed to have surveyed as public lands, to the end that the same may be duly brought into market as such.

Very respectfully, your obedient servant,

JAS. WHITCOMB,
Commissioner.

WILLIAM MILBURN, Esq.,
Surveyor-Gen'l, St. Louis, Mo.

440 *Rep't of Solicitor McRoberts*

"A, No. 20."

No. 300. GENERAL LAND-OFFICE,
SOLICITOR'S BUREAU, *October 22d*, 1840.

SIR: The surveyor-general of Missouri and Illinois has, in pursuance of the directions contained in your letter of the 24th of Sept., 1839, submitted a report, with various accompanying documents, upon the claim of the inhabitants of the village of Carondelet, in the State of Missouri, to a tract of land lying south of the river Des Peres, as a common.

I have examined this report, and the accompanying evidence and exhibits, and submit the following as the result of this examination.

On the 22d of June, 1839, the Secretary of War addressed a letter to the Com'r of the General Land-Office, enclosing a letter from the sur. general of Missouri, and plat of survey, and requested that measures be taken to sell the land lying south of the river Des Peres, as designated on the plat, and which was claimed as common by the village of Carondelet, but which he believed belonged to the U. States.

The subject was referred to Judge Burchard, the Solicitor, who reported the several thousand acres of the land included in Brown's survey of the common was public property, to which the citizens of Carondelet had no legal or equitable claim, and that the same, with the exception of the part needed for military purposes and the portions included in private claims, should be surveyed and sold as public land.

The district attorney of Missouri has also given an opinion against the validity of the claim to common of the tract of land lying south of the river.

The surveyor-general entertains a different opinion, as appears from his report dated 15th of April, 1840.

The subject is one of great importance, looking at the amount of property, and still more so as it respects the principles involved in the decision. The claims to lands designated as commons, in favor of the

inhabitants of Carondelet, be it little or much, depends upon the act of Congress approved 13th June, 1812, 1st vol. Laws and Instructions, chap. 140, the first section of which provides that "the rights, titles, and claims to town' or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Arkansas, in the Territory of Missouri, which lots have been inhabited, cultivated, or possessed prior to the 20th day of Dec'r, 1803, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

441 *To* act then contains a proviso excepting from its operation any claim or claims to the same lands, or any part thereof, confirmed by the board of commissioners.

The 2d section also gives the President power to reserve certain portions of such lands for military purposes.

On the 27th of January, 1831, Congress passed another act, (same vol., ch. 406,) which declares that "the U. States do hereby relinquish to the several towns and villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, and Little Prairie, in the State of Missouri, all the right, title, and interest of the U. States in and to the town or village lots, out-lots, common-field lots and commons, in, adjoining, and belonging to the said towns or villages confirmed to them respectively by the 1st section of the act of Congress passed the 13th June, 1812, to be held by the said inhabitants of said towns and villages in full property according to their several rights therein, to be regulated or disposed of for the use of the inhabitants according to the laws of the State of Missouri."

This last act, which was approved the 27th of Jan'y, 1831, confers no new or additional rights. It is nothing but a bare relinquishment from the Government of the land confirmed to several towns and villages by the act of June 13th, 1812.

Indeed it is difficult to perceive what object was contemplated by the act of 1831, unless it was to acknowledge a right in the State of Missouri to pass laws for the final disposition of the property, and especially the school lands referred to in the 2d section. The act of 1812 being the foundation of this claim by the inhabitants of Carondelet, we will proceed to examine its provisions, together with the evidences of right to this commons.

The act does not, as seems to have been supposed, confirm all claims to lots or all claims to commons. On the contrary, it virtually negatives mere claims not founded in right; it confirms the title to the land, not according to the claim, but according to the "several right or rights," titles and claims, to the parties. These are the words: that the rights, titles, and claims to the town or village lots, out-lots, common-field lots and commons, &c., &c., "are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

Here we have rights, titles, and claims confirmed, but not indiscriminately; they are confirmed only according to "their several rights," or according to their rights in common thereto.

The act does not say that these lands shall be confirmed according to the "claim" of the parties—not at all; but it expressly enacts that it confirms claims according to the "right or rights" of the claimant or claimants, and not otherwise.

442 Had the act of 1812 read thus, "that the rights, titles, and claims to town or village lots, out-lots, common-field lots and com

mons," &c., "are hereby confirmed to the inhabitants of the respective towns and villages aforesaid," and no other words, the case would then have been clear. The mere naked claims would have been confirmed.

If Congress had intended to confirm such, would not the enactment have been expressed in the very words as stated?

But Congress intended no such thing, because in the enacting clause of the statute, and as a very material part of it, it added, "according to their several right or rights in common thereto."

By confirming the title to lands according to rights, it negatives all those not founded in right. The rule is well illustrated by the maxim "expressio unius, est exclusio alterius." But it may be asked why the terms, "rights," "titles," and "claims," inserted in the act, if Congress did not mean to confirm them all, and what was meant by "rights," "titles," and "claims?" This is the answer: Congress was legislating in regard to property that had belonged to two other governments, France and Spain. These governments had adopted rules for the disposition of the public domain. In some instances, absolute grants had been made. The fee-simple had passed, and Congress merely recognised and affirmed that which, by the treaty and the law of nations, was already absolute.

Other cases existed where the title had not been perfected, but where the claimants had complied with their agreements, and with the laws and usages of the Government previous to the cession of Lou'a to the U. States, and where good faith and strict justice required that the titles and claims should be perfected. It was for the confirmation of such rights, titles, and claims that this act of Congress was passed; claims not founded in right, or stained with fraud, are not claims within the meaning of the law, and were never contemplated.

The construction that the lands were to be confirmed according to right, makes the case intelligible. It is rational; it opens the door to investigation, in order that the Government and individuals may have a full and impartial hearing. But to contend that all claims, however vague or unfounded, are embraced by this act of Congress, makes the case irrational, because it precludes investigation. Nay, more, such a construction would subvert the obvious intent of its makers and the principles of universal justice. I therefore conclude that no claim was confirmed by the act of June 13, 1812, except those founded in right.

The next inquiry is, Has the claim to common by the citizens of Carondelet to the land lying south of the river Des Peres any foundation in right?

Before proceeding with the inquiry, it is proper to remark that
443 there is no evidence of any grant of this land to the village of Carondelet for common, or any other purpose, by the Spanish authorities.

On the 6th of December, 1796, John B'te Gamache presented a petition to the lieut. governor, Zenon Trudeau, in which he states, "that after the petition he handed to you on the 5th of October last, for the purpose of obtaining the continuation of their lands, (meaning the inhabitants of Carondelet,) you told him that altho' you could not accede to his demand, you would, however, make your efforts to grant him 40 arpens above the parc."

The petition then proceeds to inform the lt. governor that he has a mill, and prays for a grant of land to himself, to be bounded by the land of Mr. Constant, the Mississippi, and the river Des Peres and the village of Carondelet.

Upon this petition Mr. Trudeau made the following endorsement: "The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower down, cannot be admitted.

"St. Louis, the 7th Dec'r, 1796."

What became of the petition of the 5th of October does not appear. Its object seems to have been a direct application for an extension of the village common, and was refused.

On the 25th of Dec'r, 1797, Antoine Soulard made this certificate: "We, the undersigned, a surveyor commissioned by the gov't, do certify to all to whom it shall appertain, that on this 21st of Dec'r, in virtue of the order transmitted by the lieut. gov'r to Mr. De Treget, captain-commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of Dec'r, 1796, which line must be parallel with those of Mr. Ant'e Reilhe and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands, which had been formerly surveyed by Mr. Pierre Chouteau in virtue of an order from the lieut. gov. Having taken the bearing course of these same lands, I found that they ran S. 28° W. I followed this same course 23 arpens 3½ poles, at which distance I intersected the river Des Peres; the end of the line on the bank of the same river has been bounded with a stone, having for witness two flint stones and one flattened lead bullet. The land of Mr. Alvarez must be distant from the said stone bound 24 444 feet, in following the same line parallel; and in order that the said inhabitants may prove the same, I have delivered these presents.

"St. Louis, of Illinois, 25th Dec'r, 1797.

"ANTOINE SOULARD."

On the 18th of Feb'y, 1806, Mr. Soulard made out a certificate that the inhabitants of Carondelet had requested him to measure for them "a portion of land which was granted to them as a common by the lieut. gov., Don Zenon Trudeau;" that Mr. B. Cousin was to have made the survey, but when he went to the place his compass was out of order, and he failed to make the survey, and that his own engagements had prevented him from doing it.

This certificate was made several years after the change of government, was not under oath, was not authorized by any law, and gives no description to the land. It is therefore not such a paper as can be of any service in the examination of the case.

For the purpose of making out a claim to commons, sundry ex-parte affidavits have been made by citizens of Carondelet, and which the sur. gen'l has included with his report. These affidavits state that the inhabitants have been in the habit of procuring rails, wood, hay, &c., from the land claimed, or a part of it, for a considerable length of time—some of them say as much as forty or forty-five years. They all speak of the survey made by Mr. Soulard the 25th of Dec'r, 1797, and which terminated at the river Des Peres. In these affidavits it is also stated that Mr. Soulard proceeded no further than the river before named, in consequence of high water.

Louis Courtois, sen'r, testifies: "They (the inhabitants of Carondelet) claimed and used as their commons from is called Loaf Sugar, (understood to be a mound,) about 2 miles north of the village of Carondelet, to said village and to their common field. He also certifies that the lieut. gov., Trudeau, granted them 150 arpens, extending south from the common field and running parallel with the Mississippi, and that the survey of Mr. Trudeau was not continued south of the river Des Peres, because of high water."

The affidavit also contains this passage:

"I know, that after the survey of Mr. Soulard—that is, by him begun and not finished—*that* the inhabitants of Carondelet themselves, either by order of Zenon Trudeau or Antoine Soulard, went and continued running a line south of river Des Peres, and blazed the same to the extent they claimed."

Other persons speak of a blazed line being found when Mr. Rector made the first survey in 1821, and they also speak of a grant made by Lieut. Gov. Trudeau of this common to the inhabitants of Carondelet.

They also say that this line, blazed by themselves, was made
445 during the time of the Spanish government, &c. I have copied the exhibits herein for the purpose of presenting a full view of this claim as made by the claimants themselves. We will now proceed to examine the exhibits and papers.

The ex-parte affidavits all speak of a grant by Lieut. Gov'r Trudeau, and they also refer in the clearest manner to his order endorsed upon the petition of Gamache, and it is to that that they refer when the speak of a grant. For example, the affidavit of Peter Delor, sen'r, contains the following passage:

"They (the inhabitants of Carondelet) claimed north of the river Des Peres, and used as their commons as far as what is called Sugar Loaf, about two miles north of the town.

"Ques. Do you know that the claim of commons extended south of the river Des Peres?

"Ans. Yes, I remember that in the year 1796 a petition was presented to Mr. Zenon Trudeau, by Mr. John B. Gamache and myself, in behalf of the inhabitants of Carondelet, for a continuation of their land, to which petition Mr. Zenon Trudeau made the following reply: That he could not give us the continuation of our land, but seeing the industry of the people of Carondelet, in fencing round their fields, he would grant them 150 arpens further down, beginning at the S. W. line of their common fields, and running a direct south course parallel with the river, 150 arpens; which was granted as aforesaid by said Trudeau, under his hand, the same year."

I have copied this paper to show the impression of one of the inhabitants interested in sustaining the claim. He says that when the petition was presented to Lt. Gov'r Trudeau for a continuation of the common, that he said he could not give them the continuation of the land, but would give them 150 arpens, running a direct south course, parallel with the river, and then that Mr. Trudeau made the grant under his hand the same year. The petition to Mr. Trudeau and his answer have been heretofore quoted.

In the petition of Mr. Gamache, of the 6th of October, 1796, he makes a reference to another petition, which had been presented on the 5th of October, and the prayer of which had been refused. It must be that to which Mr. Delor refers in his affidavit. Mr. Delor refers expressly to Gamache and himself as having made application, and then adds that the 150 arpens south were granted by Mr. Trudeau the same year.

The witnesses appear to be illiterate, and which accounts for their statements that Lieut. Gov. Trudeau made a grant of the land.

There is no grant whatever to the inhabitants of Carondelet of the land now claimed for commons, or for any other purpose.

The endorsement of Trudeau upon Gamache's petition is not a grant. He refused to grant the land for a common, when the application was direct for that purpose, in October, 1796.

446 In Dec'r, 1796, when Gamache applied for a part of the same land, he endorsed upon his petition that the land applied for had been "reserved to furnish the wood necessary to the village of Carondelet."

This declaration manifests an intention on the part of Gov. Trudeau to withhold the land for that purpose, and not to make any grants to individuals within the same. He seems to have refused to make any grant of the premises, either to the inhabitants or to individuals. His refusal to make a grant the 5th of October of the land, and his not having executed any grant to the village, shows most conclusively that this tract of land was not severed from the public domain, and that it continued and was part of the domain of the king at the date of the cession.

The next piece of evidence which has been adduced in support of the right to this land as a common is a certificate of Antoine Soulard, the sur. genl., which has been copied in the preceding part of this report.

In this certificate Mr. Soulard states that, in pursuance of an order of Lt. Gov'r Trudeau of the 7th Dec'r, 1796, and which corresponds precisely with the date of the endorsement of Trudeau upon Gamache's petition, and in which the inhabitants are enjoined to make known their lines, &c., he made a survey, as agreed upon, from the extremity of their land as surveyed by Mr. Chouteau; that the bearing was found to be S. 28° W.; that he run the line to the river Des Peres, being 23 arp's 3½ poles; that the end of the line was noted by stones and a leaden bullet, &c. Why Mr. Soulard did not proceed with the survey, if he was in fact to have proceeded further, does not appear from his certificate. The ex-parte affidavits say it was on account of high water, but Mr. Soulard gives no intimation of any such obstruction; had that or any other cause prevented the completion of the survey, he could hardly have omitted to state it. His certificate, made in due form, proves a survey made by the consent of the inhabitants and their commandant to the river Des Peres, with the course and distance. He speaks of an order from Mr. Trudeau for the survey, but does not state what extent the survey was to be. If we judge from his acts, he was certainly limited to the tract north of the river Des Peres.

The order referred to is not produced, nor is there any record of it, and it is inadmissible to infer from the ex-parte affidavits that this order directed the survey south of that river.

In the year 1808, this claim was presented to the board of com'rs at St. Louis for 6,000 arpens.

In the testimony then taken nothing was said about this survey of Soulard extending south of the river, or that any order or grant authorized such extension.

The survey of this land was first made by Mr. Rector, in 1832, (1821;) the lines were retraced by Mr. Brown.

447 Upon what principles Mr. Rector made this survey, so as to comply with any claim which had ever been made to this common, is wholly inconceivable. His survey is a total departure, not only

from the survey of Soulard, but also from the claim of the inhabitants and from the order of Trudeau, reserving the land.

Soulard certifies that he made his survey running S. 28° W. to the river Des Peres. Rector has run S. 35° W., the whole length of Alverez's line, and the balance of the distance he has run S. 36° 20′ W., which is a variation of between 7 and 8 degrees for upwards of five miles.

The oral testimony of all the witnesses is, that Mr. Trudeau promised them, or granted them, 150 arpens running south and parallel with the Mississippi.

In the order which Mr. Trudeau endorsed on Gamache's petition he says: "All concessions in the direction of a line beginning at the end of the lands of said village, and running parallel to the Mississippi 150 arpens lower down, cannot be admitted," &c. Yet, in despite of all this data of claim, the survey is made, not to run parallel with the Mississippi nor due south, but to run 36° 20′ W. of south.

This is not all. The inhabitants never claimed but 6,000 arpens at any time, which is 5,104.20 acres; but the surveyor did not confine himself to that quantity. He has surveyed for them 9,905.20 acres, which is nearly double the quantity claimed.

The surveyor-general, in his report dated the 15th of April, 1840, says: "You will see that my construction of the law is distinctly in favor of the village to the extent of 150 arpens from S. W. corner of the field-lands; and were there no controlling circumstances, I would not hesitate to run the west boundary as represented by the black dotted line e. d. on the plat X, which is 150 arpens parallel to the general course of the Mississippi." He then proceeds to detail his reasons for not running the line as stated. These are founded, as he says, upon the operation of Soulard in running the line c. e. on the plat X, north of the river Des Peres; and the Spanish calls for the limits and common of Carondelet in the claims of Alvarez and Valle upon the supposed intention of the Spanish gov't, and upon the act of Congress of June 13th, 1812.

From all this I respectfully dissent. I can neither accord in the premises nor in the conclusions of the surveyor-general.

1st. The survey of Soulard to the river, and his establishing his corner and executing a certificate of the fact, does not prove that he was to make any survey south of the river; and if it did, it could not establish the fact that he was to run S. 26 30 W. for upwards of five miles, in direct violation of Trudeau's order upon Gamache's petition.

2d. The calls for common in the claims of Alvarez and Valle
448 cannot change the explicit terms used by Trudeau, and which are these: "Beginning at the end of the lands of the village and running parallel to the Mississippi."

3d. The intention of the Spanish gov't toextend this line according to Rector's survey is negatived by Trudeau's order, and by the omission of the gov't to make any grant, or to cause any such survey to be made.

4th. The language of Soulard in making his survey north of the river Des Peres—"that the line must be parallel with those of Mr. Antoine Reilhe and Alvarez," "and that the land of Mr. Alvarez must be distant from the said stone 24 feet," meaning thereby the corner he established on the north side of the river—surely does not prove that such course was to be followed south of the river; much less does it show that he was to make any survey whatever south of the same.

5th. The act of Congress never intended to confirm claims not founded in right; and no inference can be drawn from it in any degree favorable to the claim under consideration.

From a full examination of the subject, I have come to the conclusion that the lands included in the survey of the commons were not granted by the Spanish gov't to the inhabitants of Carondelet for the purpose contemplated, nor for any other purpose; and that the endorsement of Lieut. Governor Trudeau upon Gamache's petition was not a grant of the land, and can only be treated as an intention to reserve a part of the lands south of the river; in his own words, "to furnish wood necessary to the village of Carondelet;" and that the fee-simple in the soil did not and was not intended to pass out of the Spanish crown, and that the title to the land was in the crown at the date of the cession, and as such passed to the U. States.

2d. That the act of Congress of June 13th, 1812, did not confirm the lands as surveyed by Mr. Rector to the village of Carondelet, nor was it affected by the act of January, 1831. I however believe that good faith to the citizens of Carondelet, and in fulfilment of what they were led to believe was the intention of Lt. Gov'r Trudeau to do in the premises, that Congress will make a grant of some portion of the lands for the purpose contemplated. I therefore advise that the tract of land beginning on the Mississippi River at the figure 6, laid down upon plat X, and near the N. E. corner of Martigny's survey; thence with the black dotted line to d; thence with said line to the river Des Peres, and up the river to the line of Alvarez's survey, and across the river to letter e; and from said letter e to c, and on to the river with the present survey, be reserved for the future action of Congress. The quantity within these limits is about 7,700 acres, as estimated by the clerk of the surveys. Within this tract is also situated the Jefferson Barracks, in Missouri.

449 By making this reserve, Congress can grant the 6,000 arpens, which is all the inhabitants claimed, which is 5,104.20 acres, excluding all private claims, to the village of Carondelet for a common, or in such manner as may be deemed proper, and can retain of the public land 1,702 acres as a site for Jefferson Barracks, or for any disposition that may be judged expedient.

I further advise that the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys, and which amounts to several thousand acres, be surveyed and sold as public land.

I am, very respectfully, your obdt. servant,

SAM'L McROBERTS,
Solicitor.

NOTE.—The papers are all returned. Plat X, which is specially referred to, is made part of this report.

Letter from J. R. Poinsett to Gen'l H. Atkinson.

WAR DEPARTMENT,
November 16th, 1840.

SIR: I transmit herewith a copy of a letter from the Acting Com'r of the Gen'l Land-Office, of the extract from the report of the Solicitor of that Office, and of the plat X, referred to by the Acting Commissioner.

You will perceive that this Office confirms the report of the Solicitor, and that the latter is of the opinion that the village of Carondelet has no legal claim to the land called the commons of that village, but that it has so strong an equitable claim to a part of it, Congress will probably sanction it; and he advises that a portion of it, which he designates, be reserved for the future action of Congress. The part thus recommended to be reserved would allow 5,104.20 acres for a common for the

village of Carondelet, which is the extent of its claim, and 1,702 as a site for Jefferson Barracks, and for military purposes connected with it. You will please cause this latter quantity to be laid in such direction as would be most useful to that post, and as would best answer for the general military purposes connected with it; and you will cause a plat to be made of it, and forward it to this Office as early as practicable.

Very respectfully, &c.,

J. R. POINSETT.

Brig'r Gen'l H. ATKINSON,
Jefferson Barracks, St. Louis, Mo.

Letter from J. R. Poinsett to Com'r Gen'l Whitcomb.

WAR DEPARTMENT, *Nov. 18th*, 1840.

SIR: I return you the plat of the commons of the village of Carondelet, which accompanied your letter of the 11th inst., and for
450 the information of your Office I enclose you a copy of the instructions given to Gen'l Atkinson to lay off and transmit a plat of that part of the tract embracing 1,702 acres, which the Solicitor of your Office is of the opinion may properly be retained for military purposes. As soon as the plat shall have been received from Gen'l Atkinson a copy of it will be furnished to you.

Very respectfully, your most obt. servant,

J. R. POINSETT.

JAMES WHITCOMB, Esq.,
Com'r Gen. Land-Office.

Letter from Com'r Shields to F. R. Conway.

GENERAL LAND-OFFICE,
Sept. 1st, 1845.

SIR: On the 11th July, Alexander Kayser applied for instructions to be sent to you for the survey of a part of the Carondelet common, as directed in 1841, which was refused by letter of this date, a copy of which is herewith enclosed.

It may be important, however, to have a diagram showing the area of that part of the survey of the commons approved by Sur. Gen'l Milburn on the 15th April, 1840, lying north of the river Des Peres, and also the area of the tract within the dotted red lines, and within the dotted black lines.

You will please, therefore, forward such a diagram, excluding of course the areas of the confirmed private claims.

Yours of the 20th ultimo has been received enclosing 24 plats of claims conf'm'd by the act of 4th July, 1836, and also yours of the 21st ultimo transmitting 24 plats of subdivisions asked for by the reg'r of Clinton, Mo.

Very respectfully, your obed't servant,

JAMES SHIELDS, *Comm'r.*

F. R. CONWAY, Esq.,
Sur. Gen'l, St. Louis, Mo.

Letter from Com'r Shields to Alex. Kayser.

(Copy.)

GENERAL LAND-OFFICE,
Sept. 1st, 1845.

SIR: In reference to your communication of the 11th July, requesting

that the sur. gen'l at St. Louis may be directed to carry out the instructions of 1841 relative to the survey into sections of part of the land claimed by the village of Carondelet as "the common," I have carefully examined that claim, and have come to the conclusion that it
451 would be inexpedient at present to direct the survey of those lands, nor until the further action by Congress on the subject.

Very respectfully, your obed't servant,

JAMES SHIELDS, *Comm'r.*

ALEXANDER KAYSER, Esq.,
St. Louis, Mo.

Letter from Com. Wilson to sur. gen., St. Louis.

(Page 66.)

"A, No. 21." GENERAL LAND-OFFICE,
February 5th, 1853.

SIR: With a letter of the 26th ult'o, I received the decision of the Secretary of the Interior in regard to the "Carondelet-common case," and request that you will make known the purport of the same to all parties interested, and cause a survey of that claim to be executed in accordance with said decision.

On the 18th ult'o I addressed a letter to the Hon. Secretary of the Interior, stating that as a survey in accordance with this decision will detach a considerable body of land from the survey of Carondelet, as retraced by Brown in 1834, I requested that he would advise me whether, in ordering a survey in accordance with his decision, the lands which may be detached by the new survey from Brown's survey, and not included in any other claim, shall be laid open to sale, or whether the same shall be held in reservation, subject to the further action of Congress in regard to them.

When an answer shall have been received you will be duly advised of the same, so that your action may be in accordance therewith and that you may advise the land-officers of the proper district accordingly.

Very respectfully, your ob'd't servant,

JOHN WILSON, *Comm'r.*

SUR. GENERAL, *St. Louis, Mo.*

Decis'n of Sec'y of Interior Stuart.

(Copy.)

A. No. 22.

The Carondelet-common case.

After a careful consideration of this case, I am led to concur in the opinion expressed and judgment pronounced by the supreme court of the State of Missouri at the July term, 1844, in the case of Dent vs. Bingham, which involved the same principles which are in issue in this case.

I am of the opinion that the refusal of the lieut. gov'r, Trudeau, on the 7th Dec'r, 1796, to make the grant asked for in the petition of
452 Gamache is not evidence of title. The answer of Lieut. Gov'r Trudeau is, at the most, merely evidence of an intention or purpose to make a grant, but certainly does not of itself constitute a grant. A proprietor may very properly assign as a reason for not making a particular concession his purpose to dispose of the property in another

way; but the expression of such a purpose vests no right or title, legal or equitable, in the party in whose favor this intention has been expressed. The only source from which the village of Carondelet can derive a title in this case is the confirmatory action of Congress. That action was founded on and limited by the claim then set up by Carondelet.

The confirmation was not intended to extend, and did not extend, beyond the claim asserted; and that claim was for 6,000 arpens, extending in a direction described in the claim as filed.

It was not a claim by metes and bounds for an estimated quantity of land; for (if) it had been, then the boundaries and not the quantity would have governed. But it was a claim for a specified quantity of 6,000 arpens, without regard to the boundaries, except on the side next the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed.

This was the claim which was confirmed, and in my judgment the village can claim no more. If, therefore, that quantity can be had without interfering with the rights of others, which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off.

The Land-Office will cause the necessary orders to be made to give effect to this decision.

A. H. H. STUART,
Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, Jan'y 25th, 1853.

Letter from Sur. Gen. Spaulding to Com'r of Gen. Land-Office.

"A, No. 23." OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
ST. LOUIS, *23d March*, 1853.

SIR: I received in due time the Commissioner's communication of the 5th ulto., with which was enclosed the decision of the Hon. A. H. H. Stuart, Secretary of the Interior, dated the 25th of Jan'y last, on the "Carondelet-common case."

In that decision there is stated in regard to the right of the inhabitants of Carondelet to their commons, that the "confirmation was not intended to extend, and did not extend, beyond the claim asserted, and that claim was for 6,000 arpens, extending in a direction described in the claim as filed.

"It was not a claim by metes and bounds for an estimated quan-
453 tity of land; for had it been, then the boundaries and not the quantity would have governed.

"But it was a claim for a specified quantity of 6,000 arpens, without regard to boundaries, except on the side next to the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed.

"This was the claim which was confirmed, and in my judgment the village can claim no more.

"If, therefore, that quantity can be had without interfering with the rights of others, which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off. The Land-Office will cause the necessary orders to be made to give effect to this decision."

In his letter of the 5th ulto. the Com'r instructed the sur. general to cause a survey of the common of Corondelet to be made in accordance with said decision.

I would at once have issued directions to execute the survey of the common of Carondelet, in accordance with the views of the Secretary of the Interior, had I fully understood some points in his decision that appear to me to be rather obscure, and which it is the object of this letter to lay before you for your consideration and future instructions.

1st. The Secretary says it was a claim for a specified quantity "of 6,000 arpens, without regard to boundaries, except on the side next to the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed."

The village of Carondelet was not laid out under the Spanish government when it was only composed of some lots in its northern part; subsequently a certain number of lots were confirmed by the old board and by Recorder Bates, under the acts of 1807 and 1812, and proven before Recorder Hunt under the act of 1824.

Joseph C. Brown surveyed the village in 1839, including in his survey many parcels, and even whole blocks, within which no confirmations were ever made or possession proven. The northern part of the commons, which is covered by blocks, is the village as surveyed by Mr. Brown. Now, what must be the boundary of the common on the side next to the village, from which the expected survey is to be made to depart southerly, I cannot determine.

[See accompanying diagram A, betw. pages 196 and 197; line 139, 24 ch's on diagram A.]

If the southern line of the common field, prolonged through the village to the Mississippi River, which the board ordered on the 15th June, 1808, to be run "for the purpose of ascertaining the length of said line in French arpens," and which was run by Silas Bent on the 17th of same month, is to be taken for the commons line nearest to the
454 village, and thus become the northern boundary of the common, then this line (which appears to have been only experimental) will cut through the village, and leave south of it a portion thereof on which are lots confirmed upon possession prior to 1803. Besides that, the portion of the present common north of the village will have to be abandoned as such, and as that strip does not contain any village lots and out-lots, nor common-field lots, it would become public land.

As to this northern part of the common of Carondelet, it is proper to remark here, in justice to the inhabitants of that village, (though with the express understanding it is not for the purpose of disturbing the present northern boundary of their common as established by Mr. Brown,) that the line "two arpens below the Sugar Loaf" was originally the
Accomp'y Diag. A. northern boundary of the common of Carondelet, and the southern line of the common of St. Louis, in the survey of James Mackey, in 1806, for 4,293 arpens of this latter tract, which was produced in evi-
Accop'y Diag. B. dence by the people of St. Louis to the board, on the 10th May of that year, in support of their claim thereto, and which quantity
A. S. P. II., p. 549. of 4,293 arpens was the amount of said claims, and therefore became also the amount of the confirmation by the act of 1812.

Hunt's minutes No. 2, p. 109, and No. 3, p. 85. Again, on the 29th July, and 23d Nov., 1825, the inhabitants of St. Louis proved by B'te Riviere the southern line of their commons to be almost one or two arpens below the Sugar-Loaf—that is, just as Mackay had fixed it in 1806.

The people of Carondelet do not appear to have ever given or proven

the north boundary of their common under any of the land laws of the U. States.

Ding. B, and Hunt's minutes No. 2, p. 109, and 3, p. 85.

This boundary having been fixed by the inhabitants of St. Louis in the survey of and depositions upon their own commons, I think we may take for granted that they left to their neighbors of Carondelet only that which was strictly belonging to them, and that the northern boundary of the latter's commons, if no survey had as yet been made thereof, would be one and the same with the present southern boundary of the St. Louis common.

2d. The Secretary says: "If, therefore, that quantity (6,000 arpens) can be had without interfering with the rights of others, which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off."

It is understood by the rights of others, which has vested prior to the confirmation of the commons by the act of 13th June, 1812, to wit:

455 1st. Only the tract of Julian Chouquette of 640 arpens, con-

Doc't K, of rep't of 15th April, 1840.

firmed by the board on the tenth June, 1811, and the few village-lots also confirmed by the said board?

2d. Or, in addition to the claims just described, the tract of 35 arp's

Doc't L, of rep't of 15 April, 1840.

of Gabriel Constant, surveyed in 1796 and confirmed by the act of 1816, and the village lots confirmed by the acts of 1812 and 1824?

A, of rep't of 15 April, 1840.

3d. Or, in addition to the 2 above classes, the tracts confirmed by the act of 4th July, 1836, but which were founded on concessions prior to the oldest mention in our records of the commons of Carondelet—that is, the declaration of Gov'r Trudeau of 7th Dec'r, 1796, on the petition of J. B. Gamache, to wit:

N, of rep't 15 April, 1840. Survey No. 3067, Dec. No. 60, Gabriel Cerré, concession dated 15th March, 1789.

R, do. do. do. Survey No. 3068, Dec. No. 279, Sophia Bolage, concession dated 3 June, 1796.

P, do. do. do. Survey No. 2993, Dec. No. 121, Pierre Delor, concession dated 6 Dec'r, 1796.

Q, do. do. do. Survey No. 3119, Dec. No. 170, J. B. Martigny, concession dated 25 April, 1783.

See transcript of decision. Survey No. 3317, Dec. No. 144, J. B. Deschamps, concession dated 25 May, 1783.

Besides the three categories just mentioned, there are still within the Carondelet common other claims which I consider as being without the control of this office:

Accomp'y Doc. C.

1st. A tract of 4 arpens square granted to Louis Puyot on the 5th May, 1788; the only evidence of title is the concession. It was never acted upon by the board or the recorder, and is therefore not confirmed by any act of Congress. It was,

Accomp'y Ding. A.

nevertheless, surveyed by Mr. Brown in 1839, though I suppose merely at the request of the claimant.

2d. Abstract of 8 by 25 arpens granted to Gabriel Constant on 6th

Accomp'y Doc. D.

Dec'r, 1796. It stands in the same condition as that of Puyot, and was laid down on plat A, as well as could be from the loose data in the concession.

3d. The Gamache tract, of 6 by 40 arpens. On the 4th February, 1850, Com'r Butterfield transmitted to Sur. Gen'l Clark a copy of his communication of same day to Messrs. Holmes & Whittelsey, of this city, containing his decision, that Gamache's lot not being embraced in the list returned by Recorder Hunt, under the 3d section of the act of

the 26th May, 1824, of all the lots confirmed by the same act,
456 neither the Comm'r nor the sur. gen'l has the power to treat it as confirmed and entitled to an approved survey; and on the 20th March, 1850, Mr. Butterfield informed this office that, pursuant to the appeal of Messrs. Holmes & Whittelsey from the above decision of the 4th of Feb'y of same year, he had laid the matter before the Secretary of the Interior for his consideration and decision; since then, nothing has been received on the subject.

In fine, the U. States have made a reservation of 1,702 acres within the common of Carondelet for the accommodation of Jefferson Barracks.

This tract has been surveyed under the direction of the War Department. As it was not laid down on the plats, Sur. Gen'l Clark, on the 16th Dec'r, 1851, asked from your Office for an authenticated copy of the plat of the reservation, and on the 7th April, 1852, the Com'r furnished this office with a diagram obtained from the Topographical Bureau dated the 26th Jan'y, 1852, and signed J. J. Abert, col. Corps Top. Eng'rs; but on examination this diagram was found to be an exact copy of that lettered X, which accompanied Gen'l Milburn's report of 15th April, 1840, on which the barracks tract is not laid down, though the Secretary of War, in transmitting it to the Com'r, describes the same as being "a copy of the map and field-notes of the 1,702 acres constituting the Jefferson Barracks tract, near St. Louis."

Without prejudging the nature of your instructions asked for concerning the points in this communication, I will state what would, in my opinion, if the Secretary's decision is to be carried into effect, be the best manner to do it, in justice to all concerned, and in the view of lessening as much as possible the litigation that the consummation of the measure will necessarily give rise to, because it will bring new interests in conflict with interests that the survey of Brown in 1834 seemed to have permanently fixed, and which have been vastly enhanced during this period of time.

1st. To retrace and connect the reservation of the 1,702 acres around Jefferson Barracks; for which purpose it will be necessary to furnish this office with the plat and field-notes (in order to identify corners) of the survey of that military tract by the War Department.

2d. To enclose the blocks of the village of Carondelet, surveyed by Mr. Brown, in a single tract, by running the lines 1, 2—2, 3—3, 4—4, 5—5, 6—6, 1.

3d. To consider the village tract and surveys No. 904 for Julien Chouquette; No. 2033 for Gabriel Constant; No. 3067 for Gabriel Cerré; No. 3068 for Sophia Bolage; No. 2993 for Pierre Delor; No. 3119 for John B. Martigny; and No. 3317 for Jno. B. Deschamps, as "rights of others which vested prior" to the act of 13th June, 1812, which confirmed the common of Carondelet.

457 4th. To obtain a decision from the Interior Department upon the claim of Gamache, so that, as the case may prove, it be surveyed in behalf of his rep's, or otherwise included in the 6,000 arp's to be laid off as common.

5th. To take no notice of the unconfirmed claims of Gabriel Constant and Louis Puyot.

And then to begin the survey of the 6,000 arpens for the commons at its present N. E. corner, and follow Brown's northern, western, and eastern lines until two points are reached on the western boundary and the Mississippi River, between which a line run' parallel with the present south line of the common; parts of tracts also north of that line, which I have considered as valid interferences with Brown's survey.

If the inhabitants of Carondelet have to submit to the decision of the 25th Jan'y last, this construction of it and its being carried out will, I am satisfied, be the means of their sustaining the least injury thereby.

As I had no authority to call for documents from the parties, nor was requested to report on the case, the above suggestions are made without regard to the request contained in the letter of Messrs. Holmes and Whittlesey of 22d Feb'y last, or to the protest in that of James B. Walsh, esq., mayor of Carondelet, of the 23d of same month, nor to the verbal agreements of interested persons, but only with the single purpose of fulfilling the duties imposed upon this office by the instructions of the 5th Feb'y last.

Doc's. E. & F.

Your early attention to the matter is respectfully solicited.

I am, very respectfully, sir, your ob'd't servant,

D. A. SPAULDING,
Sur. General.

To COMM'R OF THE GEN'L LAND-OFFICE,
City of Washington.

NOTE.—The above letter was accompanied by the following papers:

A.—A diagram of the Carondelet common.

B.—A copy of Mackay's survey of St. Louis common, made in 1806.

C.—Translation of grant to Puyot.

D.—Translation of grant to Constant.

E.—Copy of letter from Messrs. Holmes and Whittlesey of 22 Feb'y, '53, to sur. gen'l, rec. to the Gamache claim.

F.—Copy of letter from J. B. Walsh, mayor of Carondelet, protesting against the Secretary's decision.

Cert. of Sur. Gen'l Loughborough.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
ST. LOUIS, *Nov. 15th*, 1853.

It is hereby certified that the letters, documents, and diagrams
458 on the foregoing pages, (1 to 72, inclusive, except page 71, which is blank,) as dated, as follows, to wit—

Surveyor-General Milburn to A. L. Magenis, dated 18th May, 1839;

Same to Gen'l Atkinson, dated 1 Aug., 1839, and Doc. B;

Comm'r Whitcomb to Sur. Gen'l Milburn, dated 24 Sept., 1839, and rep'ts N. 244 of Solicitor Burchard with same;

Surveyor-Gen'l Milburn to N. Pope, of 5th Dec., 1839;

Same to F. R. Conway, of 14th Dec., 1839;

Same to Com'r Whitcomb, of 29 Feb'y, 1840;

Same, *same* "the report" of 15th April, 1840;

And also the following documents and parts of documents accompanying said report, the parts in French and Spanish being omitted, as explained on the margin in red ink, to wit:

Documents A, B, C, D, E, F, G, (H omitted,) I, K, L, M, N, O, P, Q, R, S, T, U, V, (in part,) (W omitted,) X, and Y, (in part, as explained;)

Also, Comm'r Whitcomb to Sur. Gen'l Milburn, of 20th Jan'y, 1841, enclosing the opinion of Solicitor McRoberts, (No. 300,) and copies of letters of 16th and 18th Nov., 1840, from the Sec'y of War to Gen'l Atkinson and Com'r Whitcomb;

Also, Com'r Shields to Sur. Gen'l Conway, of 1st Sept., 1845, with copy of Com'r' letter of same date to Alex. Kayser;

Also, Com'r Wilson to sur. gen'l at St. Louis, of Feb'y 5th, 1853, with

the decision of Secretary Stuart on the "Carondelet-common case," dated 25 Jan'y, 1853;

And, finally, Sur. Gen'l Spaulding to Com'r Wilson, of 23d March, 1853, with diagram A accompanying same—

are true and correct copies of the originals and parts of the originals, as above explained, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

(For plat marked "A," see original, page 196.)

Letter of Com'r of Gen. Land-Office to Tibbetts.

1st. Commissioner of General Land-Office to Tibbetts, Feb'y 14th, 1846.

GENERAL LAND-OFFICE,
February 14th, 1846.

SIR: I have the honor to acknowledge the receipt of your note of the 11th inst., enclosing a letter from P. B. Hockaday, esq., of the 28th ulto., asking for immediate action by this Office in relation to the Carondelet common. In answer I have to state, that I deem it inexpedient to interfere in any manner with the survey of that common as originally made by Elias Rector, prior to 1817, and retraced by Joseph C. Brown, deputy surveyor, in March, 1834, more especially as the sur. gen'l, in a certificate to a plat of this common, dated 15th April, 1840, has reported to this Office that "under an act of the legislature of the State of Missouri, passed in pursuance of the act of Congress approved 27th January, 1831, the corporate authorities of the town Carondelet laid off into small tracts the land within Brown's survey of the Carondelet common, except a portion around Jefferson Barracks, and disposed of the same, or the greater part thereof, to private individuals." The lands within Rector's and Brown's surveys are not subject to pre-emption or ordinary entries, as supposed by Mr. Hockaday, they having been reserved to satisfy this claim of the town of Carondelet.

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This Office was not disposed to trouble Congress with this matter, supposing that it would be brought before that body by the parties interested; but as Mr. Hockaday has requested prompt action, I would recommend, in view of all the facts, that the claim of the town of Carondelet to the whole common, as surveyed by Joseph C. Brown in 1834, be confirmed, reserving so much as may be necessary and proper for the U. States posts at Jefferson Barracks, and all valid interferences.

Mr. Hockaday's letter is herewith returned.

Very respectfully, your obdt. servant,

JAS. SHIELDS,
Commissioner.

Hon. J. W. TIBBATTS,
House of Rep's.

Same to Wm. Schlieck.

2d. Same to Wm. Seick, 17 June, 1846.

GENERAL LAND-OFFICE,
June 17th, 1846.

GENTLEMEN: Your petition relative to the land reserved to satisfy the claim of the citizens of Carondelet, as a common to that town, has

been received; and in answer I have to state that when that land is brought into market, should the claim for common not be confirmed, due regard will be had to the interests of the settlers under the laws which may then be in force.

I regret that it is not in the power of this Office to comply with the last request in this petition, as these lands are not subject to pre-emption, and therefore the land-officers at St. Louis cannot be instructed to receive, file, or return the pre-emption declarations of the settlers on them.

Very respectfully, your obdt. servant,

JAMES H. PIPER,
Acting Com'r.

WILHELM SCHLIECK, Esq., and others,
St. Louis, Missouri.

460 *Same to Joseph Le Blond and others.*

3d. Same to Joseph Le Blond et al., 9th Dec'r, 1845.

GENERAL LAND-OFFICE,
December 9, 1846.

GENTLEMEN: Your petition to the President of the United States, praying that the commons of the town of Carondelet be surveyed as established and recognised by Surveyors-General Rector, McCrea, Milburn, and others, has been referred to this Office; and in answer I have to state that the title of the town in this common was made the subject of a special report by the Solicitor of this Office, Judge McRoberts, on the 22d October, 1840, (No. 300,) who, after reviewing the whole subject, states that "from a full examination of the subject, I have come to the conclusion that the lands included in the survey of the commons were not granted by the Spanish government to the inhabitants of Carondelet for the purpose contemplated, nor for any other purpose, and that the endorsement of Lt. Gov. Trudeau upon Gamache's petition was not a grant of the land, and can only be treated as an intention to rereserve a part of the lands south of the river; in his own words, 'to furnish wood necessary for the village of Carondelet,' and that the 'fee-simple in the soil did not, and was not intended to, pass out of the Spanish crown at the date of the cession, and as such passed to the United States.'

"That the act of Congress of June 13, 1812, did not confirm the land as surveyed by Mr. Rector to the village of Carondelet, nor was it affected by the act of 27th of January, 1831. I however believe that good faith to the citizens of Carondelet, and in fulfilment of what they were led to believe was the intention of Lt. Gov. Trudeau to do in the premises, that Congress will make a grant of some portion of the lands for the purpose contemplated."

He then suggested that about 7,700 of this common should be reserved for the future action of Congress, and that the balance, amounting to several thousand acres, should be surveyed and sold as public land; and that of the reservation thus made Congress could grant the town the 6,000 arpens, which were all the inhabitants claimed.

Acting on this opinion, this Office, on the 20th January, 1841, sent instructions to the sur. gen'l at St. Louis in conformity with the recommendations therein contained, but the surveys thus directed were not executed.

On the 11th July, 1845, Alexander Kayser, of St. Louis, Mo., as at-

torney for numerous farmers and settlers on this common, applied for immediate action on this case, in accordance with the opinion of the Solicitor above quoted in part, as modified by the decision of the supreme court of Missouri at the July term of 1844, in the case of Dent vs. Bingham. On a full and thorough examination of the whole matter,
461 this Office decided that it would be inexpedient to direct the survey of those lands until further action by Congress on the 1st Sept., 1845. This decision, which has ever since been adhered to, will enable the town of Carondelet and the settlers on this common to present their respective claims to Congress, who can best determine the meaning of the act of 27 January, 1831, and the extent of the grant to the town contemplated thereby.

Very respectfully, your obdt. servant,

JAMES H. PIPER,
Acting Comm'r.

JOSEPH LE BLOND, Esq., and others,
Inhabitants of the Town of Carondelet,
St. Louis County, Missouri.

Pierre Delor's appl'ct'n.

4. Pierre Delor's application for a pre-emption, and the Commissioner's letter thereon, Aug. 6th, 1847, &c., for land not subject to entry.

I, Peter Delor, of St. Louis County, Missouri being the head of a family, and a citizen of the United States, have, on the 22d day of July, 1847, settled and improved frac'l section 9, in township 44, in range 7 east, in the district of lands subject to sale at the land-office at St. Louis, Mo., and containing 37.40 acres, which land is reserved from sale on account of the claim to said fraction by the inhabitants of the town of Carondelet, Mo., and I hereby declare my intention to claim the said tract as a pre-emption right under the act of 4th Sept., 1841, provided the same shall become subject to entry under the provisions of said act.

Given under my hand this 22d day of July, 1847.

his
PETER + DELOR.
mark.

In presence—
THO. WATSON,
Witness to the above mark.

Filed 22 July, 1847.

N. C. OSBORN.

Com'rs letter on same.

GENERAL LAND-OFFICE,
Aug. 6th, 1847.

SIR: Your letter of the 27th ult., in reference to the action had
462 by you on the application of Peter Delor, for a pre-emption under act of 4 Sept., 1841, to *fil* sec. 9, T. 44 N., R. 7 E., has been received.

This Office possesses no official plat indicating the existence of any tract of public land of the description above given; your letter in reference to the above claim to such a tract being the first information received that any land in said township in the local position of sect. 9 had been delineated by the sur. gen'l on any plat, otherwise *otherwise* than as claimed as or belonging to Carondelet common.

From your letter it appears that you refused to allow this pre-emption claim of Delor because of the reservation of the land for said Carondelet common, your predecessor having for like reasons refused to dispose of it in any way.

Your action in this respect is approved, and for the reasons given by you a refusal to entertain the claim at all, even impliedly, to the extent reported, would have been equally tenable and more proper.

The claim (independent of the vital objection that it could not be legally made to reserved land) appears from the facts in regard to the nature of the settlement reported by you, as exhibited by the testimony filed, to be devoid of any merits.

Respectfully, your obt. serv.,

RICHARD M. YOUNG,
Comm'r.

To REGISTER, *St. Louis, Missouri.*

LAND-OFFICE, ST. LOUIS, MO.,
Jan'y 11th, 1854.

I hereby certify that the foregoing is correctly copied from the declaratory statement of Peter Delor, and a letter written by the Commissioner of the General Land-Office to this office, now on file in this office.

D. C. TUTTLE, *Register.*

Com'r of Gen'l Land-Office to Wm. C. Jones.

5th. Commissioner of General Land-Office to Wm. C. Jones, Aug. 22d, 1848.

GENERAL LAND-OFFICE,
Aug. 22d, 1848.

SIR: In answer to your communication of the 19th inst., I have to state that there is no application pending in this Office for a confirmation of the survey of the commons of Carondelet made by Joseph C. Brown, deputy surveyor, in March, 1834. On the 14th February, 1846, this Office decided that it would be inexpedient to interfere in any manner with that survey, and that the lands within it are not subject to pre-emption or ordinary entry, having been reserved to satisfy
463 the claim of the town. Notwithstanding this decision the land-officers, it is stated, have allowed entries within that survey, and Wilson Primm, esq., in a letter of the 9th instant, requested that all such entries might be cancelled.

In view of the decision above mentioned, this request will be complied with, but the question as to the extent of the grant for a common will be left for the decision of Congress.

Very respectfully, your obed't servant,

RICHARD M. YOUNG,
Commissioner.

W. C. JONES, Esq.,
Washington City, D. C.

Same to Wilson Primm.

6th. Same to Wilson Primm, Aug. 24, 1848.

GENERAL LAND-OFFICE,
Aug. 24, 1848.

SIR: In answer to your letter of the 9th inst., I have to state that,

under the decision of this Office, the lands within the commons of Carondelet, as represented by the surveys made by Joseph C. Brown, deputy surveyor, in March, 1834, are not regarded as subject to pre-emption or ordinary entry, but as reserved to satisfy the claim of the town of Carondelet under the acts 13th June, 1812, and 26th May, 1824; hence all such entries will be cancelled, but the question of the extent of that claim will be left to the decision of Congress.

The land-officers at St. Louis were this day instructed to report the reasons that induced them to permit entries within the limits of Brown's survey, and also to report all such entries that may cancelled.

The same principle will apply to the land supposed to be vacant between the commons of Carondelet and those of St. Louis.

Very respectfully, your obdt. servant,

RICHARD M. YOUNG,
Commissioner.

WILSON PRIMM.
St. Louis, Missouri.

GENERAL LAND-OFFICE.

I, John Wilson, Commissioner of the General Land-Office, do hereby certify that the foregoing, on pages 1 to 9, inclusive, are true copies from the records of this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, this 5th day of November, 1853.

[SEAL.]

JOHN WILSON,
Commissioner.

464 *List of* 15 *entries of U. S. reg., St. Louis.*

7th. List of 15 entries at the office of the register of the United States at St. Louis of lands subdivided into sections within the Brown's survey of 1834, made in the year 1847, and Commissioner's letter thereon of 1848.

Township No. 43 North, Range No. 6 East, District of St. Louis, Missouri.

Description of the tract—part of section.	Section.	Township.	Range.	Contents.	
				Acres.	100ths.
Pre. 41, E. ½ of S. E. ¼	1	43	6 E.	80	
Pre. 41, S. W. ¼	"	"	"	160	00
P. E. 41, S. E. fr'l ¼ of S. W. ¼	2	"	"	40	00
P. E. 41, N. E. fr'l ¼	3	"	"	76	12
P. E. 41, N. W. fr'l ¼	"	"	"	152	72
P. E. 41, E. ½ of N. E. ¼	12	"	"	80	00
P. E. 41, N. W. ¼ of N. E. ¼	"	"	"	40	00
P. E. 41, S. W. ¼ of N. E. ¼	"	"	"	40	00
P. E. 41, E. ½ of N. W. ¼	"	"	"	80	00
P. E. 41, W. ½ of N. W. ¼	"	"	"	80	00
P. E. 41, N. E. ¼ of S. E. ¼	"	"	"	40	00
P. E. 41, S. E. ¼ of S. E. ¼	"	"	"	40	00
P. E. 41, W. ½ of S. E. ¼	"	"	"	80	00
P. E. 41, E. ½ of S. W. ¼	"	"	"	80	00

Rate per acre.	Purchase-money.	Name of the purchaser.	Date of sale.
$1 25	$100 00	Jacob Haster, jr	Nov. 18, 1847.
1 25	200 00	John Giphard	Nov. 17, 1847.
1 25	50 00	Casper Link	June 29, 1847.
1 25	95 15	Catharine Schmit	Jan'y 4, 1856.
1 25	191 15	James Eddie	May 26, 1847.
1 25	100 00	Jacob Haster, sr	Nov. 17, 1847.
1 25	50 00	Daniel Ronecicer	Nov. 18, 1847.
1 25	50 00	Charles Hoster	Nov. 17, 1647.
1 25	100 00	William Schleck	Nov. 18, 1847.
1 25	100 00	Antoine Schultz	Nov. 19, 1847.
1 25	50 00	William Stuckenbrok	Nov. 19, 1847.
1 25	50 00	John A. Merline	Nov. 18, 1847.
1 25	100 00	Peter Baker	Nov. 18, 1847.
1 25	100 00	Lawrence Tauzberger	May 27, 1847.

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Number of receipts and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
			Volume.	Page.
16478	See Com.'s letter of Dec. 21 and R. and R.'s reply of Dec. 31st, 1855.			
16477	See Com.'s letter of Dec. 21 and R. and R.'s reply Dec. 31st, 1855.			
16196	See Com.'s letter of Dec. 21 and R. and R.'s reply Dec. 31st, 1855.			
28172				
16134	See Com.'s letter of Dec. 21 and R. and R.'s. reply of Dec. 31st, 1855.			
16472				
16482	See Com.'s letter of Dec. 21 and R. and R.'s reply of Dec. 31st, 1855.			
16473	See above.			
16483	See Com.'s letter of Dec. 21st and R. and R.'s reply of Dec. 31st, 1855.			
16487	See Com.'s letter of Dec. 21 and R. and R.'s reply of Dec. 31st, 1855.			
16488	See Com.'s letter of Dec. 21 and R. and R.'s reply of Dec. 31st, 1855.			
16479	See above.			
16477	See Com.'s letter of Dec. 21 and R. and R.'s reply of Dec. 31st, 1855.			
16140	See Com.'s letter of Dec. 21 and R. and R.'s reply of Dec. 31st, 1855.			

LAND-OFFICE, ST. LOUIS, MISSOURI,
Register's Office, June 21st, 1858.

I, Paris Papkin, register of the United States land-office at St. Louis, Missouri, do hereby eertify that the above and foregoing is fully and correctly copied from the records of this office.

Given under my hand this the day and year aforesaid.

PARIS PIPKIN,
Register.

Commissioner's letter of 1848 *on above entries.*

GENERAL LAND-OFFICE, *Aug.* 24, 1848.

GENTLEMEN: It has been represented to this Office that a number of entries have been permitted by you within the limits of the commons of Carondelet, as represented by the survey thereof made by Jos. C.
466 Brown, deputy surveyor, in March, 1834. The whole of the lands within those limits, and also that north of Brown's survey and south of the commons of St. Louis, are regarded by this Office as reserved to satisfy the claim of the village of Carondelet, under the acts

of 13th June, 1812, and 26th May, 1824, and in future you will also please consider them as reserved from sale or entry of any kind, unless otherwise instructed by this Office.

You will please report all the entries of any of these lands which have been permitted, and your reasons in detail for so doing, at your earliest convenience.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

REG'R AND REC'R
At St. Louis, Missouri.

LAND-OFFICE AT ST. LOUIS, MO.,
June 25th, 1858.

I, Paris Pipkin, register of the United land-office at St. Louis, Missouri, for the district of St. Louis, Missouri, do hereby certify that the above and foregoing is correctly copied from the original letter of Commissioner of General Land-Office, and now on file in this office.

Given under my hand this day and year above written.

PARIS PIPKIN,
Register.

8th. Copy of United States surveys of 1821, as made by Joseph C. Brown, as found in the register's office at St. Louis.

Appeal of Car., by att'ys, to Com. of Gen. Land Of.

9th. Appeal of Carondelet to Commissioner of General Land-Office, by attorneys, 30th Jan'y, 1852.

Copy.

CITY OF WASHINGTON, *January* 30, 1852.

Hon. J. BUTTERFIELD,
Commissioner of the General Land-Office:

SIR: The undersigned, as counsel, represent the interests of the city, formerly the town of Carondelet, as also the interests of individuals, in regard to the Carondelet common.

The title to this common was confirmed by the act of Congress of the 13th June, 1812, according to possession and user, prior to the 20th December, 1803. This act vested the title to common in the inhabitants of Carondelet, leaving the extent and boundaries thereof to be determined, as were those of the private lots, by proof of inhabitation, cultivation, or possession, which, in regard to a common, would necessarily mean user as a sign of possession.

By the second section of the act of 26th May, 1824, it was made the duty of the surveyor-general to survey and designate the commons
467 confirmed by the act of 1812; and under the requirements of this act, and under the instruction of the surveyor-general for Missouri and Illinois, dated the 10th March, 1834, Joseph C. Brown, a deputy surveyor of the United States, during the same month, made and returned to the surveyor-general his survey of the Carondelet common, which survey was approved by the surveyor-general on the 29th July of the same year.

This survey was made without any examination of or authority to decide upon the facts on which the extent and boundaries of a confirma-

tion made twenty years before depended, and could therefore be of no effect upon the vested rights of the inhabitants of Carondelet, or of individuals holding under prior grants or confirmations made by the United States, but, being the act of the United States, that survey is regarded by *the act of the United States, that survey is regarded by* the undersigned as conclusive against the United States, and beyond the control or revision of any ministerial officer of the Government.

After a lapse of several years, however, the Department over which you preside undertook to review Brown's survey, and issued several orders and instructions respecting it, many of these orders and instructions injuriously affecting the interests which the undersigned represent, obstructing the disposition of the land embraced within that survey, and materially retarding the growth and prosperity of the city of Carondelet and its environs.

Although the undersigned cannot believe that the orders and instructions to which they refer will or can, in any manner, impair the legal rights of the inhabitants of Carondelet when brought to the test of judicial investigation, still they are not without their injurious effect in throwing a cloud over the title to the common, and being, as the undersigned believe, illegal, they respectfully ask that they be rescinded and set aside.

In order to obviate an objection which we have heard urged against the claim which we prefer to you, we offer that the city of Carondelet, as a corporation, will make and deliver to the United States a deed, in fee-simple, for the tract of seventeen hundred and two acres included within Brown's survey, and upon which the Jefferson barracks are established.

The city of Carondelet also claims title to the land lying between the boundary-line of Brown's survey of the Carondelet common and a line which, run in a western direction from the well-known "Sugar Loaf" or "Pain de Sucre" point, will strike the northeast corner of the common-fields of Carondelet; and, in order that they may be enabled the more readily and easily to assert and maintain this their claim of title before the judicial tribunals of the country, they respectfully ask that the surveyor-general of Missouri and Illinois be instructed at once to make an official survey of the same.

The undersigned take leave to remark that they do not seek to
468 set aside or change the survey of the St. Louis commons, or of any private tract of land. All they ask is that the north line of the Carondelet common may be surveyed according to the evidence, and so far as that survey may conflict with others, the title will be determined, as it ought to be, according to the proofs which may be exhibited by the respective claimants, as it was intended it should be by the act of 1812, which left the extent and boundaries of confirmations open, to be determined judicially upon proofs, and not otherwise.

Respectfully,

(Signed) H. S. GEYER,
WILSON PRIMM,
WILLIS L. WILLIAMS,

For claimants in what are termed the commons of Carondelet south of the river Des Peres.

10th. Report of Commissioner Butterfield of the 4th March, 1852.

Report of Comm'r Butterfield, March 4th, 1852.

GENERAL LAND-OFFICE,
March 4th, 1852.

Mess:s. GEYER, PRIMM, AND WILLIAMS,
Respecting Carondelet Commons :

GENTLEMEN: I have received your application of the 30th of January last, and other arguments and papers since presented, in regard to the Carondelet-commons claim.

Action on that portion of the application of the two first-named gentlemen which calls for new survey of Caron., to extend from the north line of Brown's survey to the "Sugar Loaf," is deferred at the request of Wm. M. McPherson, esq., atty. for St. Louis, until May next—say 31st of that month—the postponement desired not having been resisted at this Office by any of the parties interested.

In your present application, and in the arguments filed, reference is made to the survey executed by Brown in 1834, for the "com's of Caron.," and it is contended that said survey is "conclusive against the U. S., and beyond the control of any ministerial officer of the Gov't." You at the same time advert to the Department having undertaken to "review Brown's survey," issued several orders and instructions "injuriously affecting the interests" you represent, &c.; and, as you "believe them illegal," you ask that they be rescinded and set aside.

The orders and instructions thus adverted to are doubtless the report
No. 244, dated Aug. 6th, 1839, of Solicitor Birchard, the report
469 No. 300 of Solicitor McRoberts, dated 22d October, 1840, and the instructions, dated 20th Jan'y, 1841, of Commissioner Whitcomb to S'r Gen. Milburn, in which Mr. Whitcomb concurred with Solic'r McRoberts in his opinion adverse to the claim of Carondelet, but proposed to reserve, excluding all private claims and the military reservation, a certain extent of land in Brown's survey for the future action of Congress, and to throw open the residue of the lands in Brown's survey by survey and sale as public lands.

On a full examination of this matter, I find that the proceedings of Solicitor Birchard and Com'r Whitcomb were received in Sept., 1845, by Com'r Shields, who, by letter of the 1st of that month to the surv'r-gen., stated that he had refused an application for the "survey of a part of the Caron. commons, directed in 1841;" and in a letter of Feb'y 14, 1846, to the Hon. J. W. Tibbats, stated that he deemed "it inexpedient to interfere in any manner with the survey of that common, as originally made by Elias Rector prior to 1817, and retraced by Joseph C. Brown, dep. sur., in 1834," &c.; that the "lands within Rector's and Brown's survey" are not "subject to pre-emption or ordinary entries, as supposed by Mr. Hockaday, they having been reserved to satisfy the claim of the town of Carondelet;" that "this Office was not disposed to trouble Congress with the matter, supposing that it would be brought before that body by the parties interested; but, as Mr. Hockaday has requested prompt action, he (Com'r Shields) would recommend, in view of all the facts, that the claim of the town of Carondelet to the whole common, as surveyed by Joseph C. Brown in 1834, be confirmed, reserving so much as may be necessary and proper for the United States post at Jefferson Barracks, and all valid interferences." This course was adhered to by Acting Com'r Piper and Com'r Young, and has not since been departed from.

As the decision of the Solicitor and the instructions of Com'r Whitcomb were not executed, I regard them as overruled by the subsequent action of Com'rs Shields, (acting) Piper, and Young, and the action of the three last named of my predecessors. It has been settled that this Office must not distrust or in any manner interfere with the aforesaid survey by Brown, unless Congress should otherwise order by further legislation; but that the said survey is subject to such adverse valid rights as may exist under confirmed private claims, and also to the right of the U. S. in the military reservation of Jeff. Barracks, as held in violation of law, and of the rights the U. S. possess under treaty as the successor of Spain. I therefore regard this Office, under existing laws, as having no further power or control over the subject.

I have further to add that I have made a report of all the facts to the committees of Congress upon a call for information in the
470 petitions of Geo. W. Dent and F. Dent, of Missouri, representing adverse private claims.

Very respectfully, y'r obt. servt.,

J. BUTTERFIELD, *Com'r.*

Ap'l to Sec't'y of Inter'r, June 8th, 1852.

11th. Appeal to Secretary of the Interior, 1852.

GENERAL LAND-OFFICE,
June 8th, 1852.

SIR: On the 26th March last, the Commissioner, on the appeal of Messrs. Read & Bryan, attorneys, submitted to you the papers in the "Carondelet-commons" case, with a transcript of his report, dated 4th March, 1852, containing his decision, in which it is held, in substance, that the survey of these "commons," as executed in the year 1834, by Joseph C. Brown, U. S. deputy surveyor, should be adhered to unless otherwise ordered by Congress, excepting from it the military reservation; and that other conflicting rights, within the limits of said survey, are properly determinable by the judiciary.

Before that report was prepared, an application was made by the Hon'ble H. S. Geyer and Wilson Primm, esq., of Missouri, for a new survey of the north boundary of Carondelet, to begin on the Mississippi, at a mound or hill called the "Sugar Loaf," and extended westward to the base-line of the commons-fields of that village.

A decision on that application was deferred until the 31st May, (ult'o,) at the request of Wm. M. McPherson, esq., of St. Louis, and with the consent of parties.

On the 3d instant, Messrs. Geyer and McPherson called the case up in person at this Office, and pursuant to my request of that date, the papers, which were submitted to you on the 26th March last, were sent back in order that such of them as relate to the said application for a new survey of the north boundary-line of Carondelet might be examined in relation to that point.

They have accordingly been considered, being herewith returned, and in reference to that application the following additional papers are also sent herewith, viz:

No. 1 a. Argument filed on the 28th April last, by Hon. J. B. Bowlin, attorney in fact for Carondelet.

No. 1 b. Argument dated 25th May, 1852, of the Hon. H. S. Geyer, for the inhabitants of Carondelet.

No. 2 a. Argument received June 4th, 1852, of Wm. M. McPherson, for city of St. Louis and others, averse to the new survey.

In addition to these arguments, I enclose—

No. 3 a. A letter dated June 5th, 1852, from A. R. Corbin, esq., and among the papers described in the schedule herewith accom-
471 panying the aforesaid transcript, report of 4th March, 1852, I refer to those designated as Nos. 15, 17, 18, 20, 21, and 25. These arguments and the papers in the case have been duly considered in connexion with the acts of Congress of the 13th June, 1812, 29th April, 1816, 26th May, 1824, and 27th Jan'y, 1831, and the following is the result:

By the act of 13th of June, 1812, U. S. Statutes at Large, vol. 2, p 748, chap. 99, the village of Carondelet is confirmed in its commons, according to its right thereto; and it is made the duty of the principal deputy surveyor for the said Territory, as soon as may be, to survey or cause to be surveyed and marked (where the same has not already been done according to law) the out-boundary lines of this village, to include its "commons." By the act of 29th April, 1816, same Statutes, vol. 3, page 325, chap. 151, providing for the appointment of a surveyor of the public lands in the Territories of Illinois and Missouri, it is made his duty to "cause to be surveyed the lands in the said Territories, the claims to which have been or hereafter may be confirmed by any act of Congress, which have not already been surveyed according to law," &c. Accordingly, "before the year 1817," a survey of the "Carondelet-commons" claim was executed by Elias Rector, U. S. deputy surveyor. (See plat D, and surveyor-general's certificate thereto of April 15th, 1840.) Subsequently, viz, on the *on the* 26 May, 1824, Congress passed an act—U. S. Statutes, vol. 4, page 65, chap. 184—making it the duty of the surveyor-general "also to survey and designate, so soon after the passage of this act as may be, the commons belonging to the said towns and villages," embracing Carondelet, "according to their respective claims and confirmations under the said act of Congress," (of 1812,) where the same has not been already done.

In order that the survey already made of this claim might be properly traced out, and be connected with the surveys of the public lands, E. J. Langham, surveyor-general, issued his instructions on the 16th Feb'y, 1834, to Deputy Surveyor Jos. C. Brown, to retrace the lines and re-establish the corners of the said survey, and that deputy did so, and made his return of survey in March, 1834. (See plat X.)

Afterwards, to wit, on the 27th Jan'y, 1831, same Statutes, vol. 4, page 435, chap. 92, an act was passed by which the U. States relinquished all their rights to the inhabitants in the commons, &c., confirmed to them by the act of 1812.

Now, here we have the act of 13th June, 1812, and 29 April, 1816, expressly making it the duty of an officer, whom the law designates, to survey this claim. He executes that duty within five years of the date of confirmation, and makes an actual survey on the ground, showing the extent and limits of the commons determined, as is the legal presumption, upon satisfactory evidence before him.

472 This survey is returned and filed, in the "forepart of the year 1817," in the office of the U. S. surveyor, and thereby notice is given in the proper place to every one as to what has been done. There, so far as the papers show, it remained undisputed for years afterwards, when, in view of the act of 1824, it became the duty of the surveyor to have it retraced and connected with the lines of the public surveys, in order to exhibit its position and locality in connexion with them; and this was done in March, 1834, by competent authority, and by the officer to whom the law had expressly delegated the power; and there it

remained, to show what had been fixed and established as the limits of the commons, after the relinquishment act of 27 Jan'y, 1831, was passed.

I find nothing in the papers to show that from the survey prior to 1817 until the relinquishment law of 1831 was enacted, a period of about fourteen years, *that* any exception by Carondelet was taken to the regularity or correctness of this survey, or any application then made by the authorities of that village to reform this survey; and after an examination of the "proceedings of the board of trustees of the town of Carondelet," (paper No. 2,) and the transcript affidavits of 1825, before Recorder Hunt, and the original affidavits herewith of 1840 and 1851, referred to by Mr. Geyer, I do not see that they furnish sufficient evidence to warrant us in treating Brown's resurvey as erroneous, particularly as we find that in the year 1848 (paper 6) the inhabitants of Carondelet, in their petition to Congress, represent "that the corporate authorities of the village, 'acting' under the belief that this survey of Brown's was conclusive testimony of the extent of their claim to commons, did, in the year 1838, proceed to subdivide said lands claimed as commons into small tracts, taking for the out-boundaries the lines established by the survey of Brown," &c.; and in consideration of the facts, prayed Congress "to pass an act confirming to the inhabitants of the village of Carondelet their title to the commons according to the survey of Brown as made in 1834," &c.

We find, further, that if a new survey was ordered, it would not be a matter merely between the United States and Carondelet, but one in which the U. S. has no direct interest, as such new survey would include fractional section 9, which has been selected by the State, and approved to her under the act of 4th Sept., 1841; and would also embrace a portion of the commons confirmed to St. Louis by the aforesaid act of 1812, and which has been surveyed and set apart to her.

The United States, then, by these proceedings, have parted with the fee in the lands, and any question of conflicting interests in them is in my opinion purely a judicial one, and in which the executive can now properly exercise no control.

But recurring to the proceedings already had in respect to the sur-
473 vey for Carondelet, we find that an actual survey was executed prior to 1817 by an officer whom the law ordered to make it; that thereby due notice was given to all parties concerned of what had been determined by lawful authority to be the true extent and limits of Carondelet commons; that Congress thus had notice of the existence of this survey when the act of 1824 was passed, directing the survey of the commons belonging to certain towns and villages "where the same has not been already done," and that this survey remained undisputed at the passage of the last law which Congress enacted on the subject, to wit, the relinquishment act of 27 January, 1831, and that then no effort was made by Carondelet to have said survey re-formed or changed; that afterwards, in 1834, a competent officer, acting within the sphere of his authority, retraced and connected the limits of this survey with the lines of the public surveys, and that no objection to the north boundary was brought to the notice of this Office until after a lapse of more than 34 years.

These facts considered, I hold that the question of limits on the north ought to be treated by the Department as settled, so far as executive action is concerned, and that the inhabitants are estopped from a new survey as now applied for.

I therefore decide that the survey before 1817, which was retraced by

Brown in 1834, should be adhered to, under the stipulations specified in the Commissioner's report of the 4th of March, 1852, and that this Office is not authorized to order a new survey on the north boundary.

A copy of this will be furnished to Messrs. Geyer, Bowlin, and McPherson; the first two for, and the last adverse to, Carondelet.

With great respect, your obd't servant,

JOHN WILSON,
Acting Commissioner.

Hon'ble A. H. H. STUART,
Secretary of the Interior.

GENERAL LAND-OFFICE.

I, John Wilson, Commissioner of the General Land-Office, do hereby certify that the foregoing, on pages 1 to 6, inclusive, is a true copy from the record, vol. 18, pages 236 to 242, inclusive, of this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, this 6th day of October, 1852.

[SEAL.] JOHN WILSON,
Commissioner.

474 *Dec's'n of Sec. of the Int., Feb'y* 23, 1855.

12th. Decision of Secretary of the Interior of the 23d Feb'y, 1855.

DEPARTMENT OF THE INTERIOR,
February 23d, 1855.

SIR: In your letter of the 26th March last you ask what disposition is to be made of the lands which may be detached by a new survey from Brown's survey of Carondelet commons, and which are not included in any other claim; and with your letter of the 2d of April last you submit a communication from the surveyor-general of Illinois and Missouri, asking further instructions in relation to certain points named therein, in order to enable him to carry out the decision of my predecessor in the case.

To arrive at a satisfactory conclusion on this subject, I found it necessary to examine the whole question involved, when it appeared that the decision of my predecessor was only partial, and actually left the whole case open. I have, therefore, carefully examined it as one of original jurisdiction; and, after having given due weight and consideration to all the evidence submitted, and to the arguments presented both for and against the claim of the inhabitants of Carondelet, and the action heretofore had by this Department, I am clearly of the opinion that undue importance has been given to the decision had by the supreme court of the State of Missouri in the case of Dent vs. Bingham, on which the decision of my predecessor is based, especially as that decision was arrived at through a division of opinion on the part of the then judges sitting in the case, two of these judges having come to the same conclusion on different and opposite grounds, and the third not only dissenting from the opinions expressed by the majority of the court, but also from the decision then made by them, and more especially at the concurrence of Judge Tompkins, one of the two judges above alluded to, was based on an opinion previously given by him, "that the acts of 1812 and 1831 availed the claimants of village lots, out-lots, and commons nothing, unless they presented their claims before the recorder of land-titles;" which view has been subsequently overruled by the

same court, and also by the Supreme Court of the U. States in the case of Guitard vs. Stoddard, 16th Howard, pp. 494 to 513.

Congress, by the act of June 13th, 1812, confirmed the right, title, and interest of the inhabitants of Carondelet to common, and designated the principal deputy surveyor as the person who should determine by a survey the extent of that common; and this survey was made in 1816 or 1817 by the proper officer. On the 26th of May, 1824, Congress passed another act, requiring, among other things, that the surveyor-general should survey and designate the commons belonging to the several villages according to their respective claims and confirmations
475 under the act of 1812, where the same had not already been done. Carondelet commons was "already" surveyed, and was not therefore affected by the act of 1824.

On the 27th January, 1831, Congress relinquished to the inhabitants of the several towns or villages all the right, title, and interest of the United States in and to the commons, as confirmed to them by the act of 1812.

As Rector's survey of 1816 or 1817 was made prior to the survey of the surrounding public lands, it was necessary under the act of 1831 to connect it with such surrounding lands; and E. T. Langham, the then surveyor-general, by virtue of authority duly vested in him, instructed Deputy Surveyor Joseph C. Brown to retrace Rector's lines of the Carondelet survey, to connect it with the adjoining surveys, by establishing the proper corners at the intersection of the lines thereof. Brown, in 1834, under these instructions, retraced Rector's lines, and states in his returns to the surveyor-general that Rector's corners and his western and southern boundaries were easily found and identified by him.

Under this state of facts, the question to be determined appears to be, does the act of 1812, the operations had under that act, and the subsequent acts of 1824 and 1831, of themselves constitute a title in Carondelet to the whole extent of the survey made by Rector in 1816 or 1817, and retraced by Brown in 1834?

The Supreme Court of the United States in Strother vs. Lucas—"a confirmation of title by act of Congress not only renders it a legal title by act of Congress—*not only renders it a legal title by act of Congress—not only renders it a legal title*, but furnishes higher evidence of that fact than a patent, inasmuch as it is a direct grant of the fee by the Government itself, whereas a patent is only the act of its ministerial officers."

And in the case of Mackay vs. Dillon the same court says: "The act of Congress of 1812, confirming the claims to commons adjoining and belonging to the town of St. Louis, did not define the extent and boundaries of these claims, nor adapt the evidence laid before the board of commissioners for that purpose. The boundaries of the claims thus confirmed were designedly left open to the settlement of the respective claimants by litigation in the courts of justice, or otherwise."

The act of 1831 was passed with a full knowledge by Congress of all that had been previously done in the case, to wit, the survey by Rector and the reservation of the Jefferson Barracks tract. Such is the legal presumption; and in this case it seems to me sound.

The reservation for the barracks, though not express, is implied, as in the case of Fort St. Marks, Florida, for which see the case of Mitchell et al. vs. The United States, 15 Peters, pp. 52 to 92.

476 In view, therefore, of all the facts and circumstances of this case, and of the opinions expressed by the highest legal tribunal known to our laws, I am compelled to the conclusion that, as the surveys of 1816 and 1834 were executed by competent authority, were duly ap-

proved, and were for a series of years acquiesced in by the inhabitants of Carondelet, both the Government of the United States and the inhabitants of Carondelet are estopped and concluded thereby. My decision therefore is, that the survey of 1816 or 1817, as retraced by Joseph C. Brown in 1834, should be sustained, excluding, of course, the 1,702 acres heretofore set apart and reserved for the use of the military post at Jefferson Barracks, and that the parties claiming adversely to Carondelet should not be hindered thereby from establishing and settling their rights before the judicial tribunals of the country.

You will furnish the surveyor-general of Illinois and Missouri with a copy of this decision, and instruct him to have the lines of the original reservation for Jefferson Barracks properly run and marked in the field, if that has not already been done, and to make the usual and proper returns thereof to your office and to that of the register of the land-office at St. Louis.

All the papers received in relation to this case are herewith returned.

Very respectfully, your obdt. servant,

R. McCLELLAND, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND-OFFICE.

Dec'sn of Com. Gen'l Land-Office, 26th Feb., 1855.

13th. Decision of the Commissioner of the General Land Office of the 26th of February, 1855.

GENERAL LAND-OFFICE, *February 26th*, 1855.

SIR: Under date the 26th January, 1853, the Hon. A. H. H. Stuart, then Secretary of the Interior, communicated to this Office his decision in the "Carondelet-common case," and on the 28th of that month this Office addressed him with a view to elicit further information, so as to carry out the decision of the appellate authority.

The surveyor-general at St. Louis was apprised of these proceedings by letter from us, dated February 5th, 1853, enclosing a copy of the decision aforesaid. The subject passed over from the late administration, and necessarily came before the present Secretary of the Interior, the Hon. R. McClelland, who has fully examined the whole subject, and rendered a final decision covering all the points raised on the matter.

A copy of the decision, dated 23d February, 1855, I herewith transmit for your information and government. You are directed to make its purport known to the parties interested.

Pursuant to that decision, you will make out a connected diagram
477 in duplicate, one for this and one for the land-office; on that diagram you will exhibit the survey sanctioned by the said decision, to wit, the survey by Rector, as retraced by Jos. C. Brown in 1834, showing the connections of the same, and taking care expressly to exclude therefrom the military reserve of 1,702 acres at Jefferson Barracks, if you have the correct field-notes; but if not, it will be necessary to have the lines of that reserve properly run out and marked in the field in the first instance; you will also take care to designate on said diagram all other claims adverse to Carondelet, setting forth on said diagram the nature of each of them, according to the records, and in your act approving the official diagrams you are directed to make a distinct and unqualified exclusion from the said survey of the military reserve at Jefferson Barracks, as the absolute property of the United States, set apart for their own special use, and in exclusion from any laws for the disposal of the public domain; you will also declare in your approval

of the "Carondelet commons" survey, that as regards the rights of all other claimants within the limits of that survey, who hold adversely to Carondelet, your approval is in no measure intended, nor shall it be construed, to interfere with the rights of such adverse claimants to seek a judicial settlement of their several interests.

Very respectfully, your obed't serv.,

JOHN WILSON, *Comm'r.*

JNO. LOUGHBOROUGH, Esq.,
Sur. Gen'l.

A. H. Evans's test.

A. H. EVANS, being duly sworn, testified: I was in the surveyor's office from 1822 to 1836. I was sometimes merchant, boatman, and surveyor.

I came here in 1817. I had been out with the surveyor before 1822. After I went into the office I did no other business. I was acquainted with Elias Rector. My business in the surveyor's office was to make out the first plats from the field-notes returned by the deputy surveyors. I have seen what was called Rector's notes of a survey of Carondelet commons. I never saw any survey. I never saw any instructions to Rector to make the survey of Carondelet commons. It was done before I came into office. The first I saw of the notes of survey was at the surveyor-general's office. I made a list of the papers of Rector at the request of Gen'l Rector, who was his administrator. Elias Rector died in 1822. I examined the papers of Elias Rector at the house where he died, at the place where Peter Lindell now lives. I did not find these notes of the survey at E. Rector's. The first I saw of these notes of Rector was in a pigeon-hole in the surveyor-general's office, loose, where papers of this kind were kept. There was no field-book that I remember.
478 I never used them. They were never recorded. I never heard the surveyor-general direct me to notice these notes. The survey was not signed, except "E. R." I never saw any plat of survey of these notes, nor any instructions for making the survey. If the surveyor was making a survey under instructions he would begin "by virtue of instructions to survey the commons of (such a date,) I began," &c. I see nothing here to indicate that this is an official survey. There is no oath of the chainmen, as required. All surveyors are required to have two chainmen and two axemen, and their oath was annexed. General Rector was the administrator of Elias Rector, and he requested me to act for the estate. General Rector was the surveyor-general at that time. I never heard of any charge made by Elias Rector for any survey of this thing.

The old books of General Rector and Elias Rector are stolen or carried away, and, so far as I recollect, I never heard of any charge made for these notes of a survey by E. Rector. I was requested to make out a list of accounts. I have no recollection of any account in the books of Elias Rector for surveying this land for Carondelet common. I never knew that this survey was presented for approval in the surveyor-general's office. In the early times I made out the plats of all the surveys around St. Louis and Carondelet. There was no such survey as Rector's on any plat before 1834. The plats I made out included all the approved surveys. So far as I know, the plats had been made before 1822 of the country round St. Louis. These plats were stolen or carried away, or so defaced that you could not tell what they were. I saw one of the plats at Washington, but it was blurred over. By the contract

for surveying, 3 plats were made out for the office. There is but one plat remaining, blurred over, in the surveyor-general's office, with Rector's and Brown's name blurred, so you can't read it. The plats of 1822 that I made of St. *St.* Louis and Carondelet townships are gone. I saw a copy in Washington very much defaced. There are 3 different plats of the commons, all different. No two of them are alike.

Q. Can you locate the tract of land lying within the lines following: commencing at the Sugar Loaf mound, running thence to the northeast corner of the common-fields of Carondelet; thence along the front line of said common-fields to the village of Carondelet; thence along the north line of the said village to the river Mississippi; and thence up the said river to the said Sugar Loaf mound, or to a point on the bank opposite said mound, on a continuation of the line to northeast corner of the common-fields?

Ans. I can locate this tract with or without the map. This is a specific tract of land, as definite as any that could be described. I don't know of any private survey made by Elias Rector. The first time I ever saw a survey of the United States for the Sugar Loaf line was in 1840, when I saw the survey of Brown of the incorporation of St. Louis.

479 Deposition of Dr. Nicholas H. Demenil, read for plaintiff, as follows:

Depo'n of Dr. Nich's Demenil.

In the St. Louis land court.

THE CITY OF CARONDELET }
vs.
THE CITY OF ST. LOUIS. }

To the defendant:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause, on the part of the plaintiff, will be taken at the house of Dr. Nicholas Demenil, on South 3d street, in the city of St. Louis, in the county of St. Louis and State of Missouri, on the 20th day of February, 1858, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, till completed.

BRITTTON A. HILL,
Atty. for Plff.

Depositions of witnesses produced, sworn, and examined on the 20th day of February, in the year of our Lord 1858, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the house of Dr. Nicholas Demenil, on South 3d street, in the city of St. Louis, in the county of St. Louis and State of Missouri, before me, M. R. Mullen, a notary public in and for the county and State aforesaid, in a certain cause now pending in the land court of the county of St. Louis, State of Mo., between the city of Carondelet, plaintiff, and the city of St. Louis, defendant, on the part of the plaintiff.

NICHOLAS H. DEMENIL, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and says:

I came to St. Louis in 1834, and have lived here ever since. I know where the Sugar Loaf mound is, between the city of St. Louis and city of Carondelet, on the bank of the Mississippi.

Question by plaintiff's counsel. Do you know what said mound is a mark of?

(Objected by S. Simmons, attorney for defendant, as leading.)

Answer. I do not know except by hearsay; officially I do not know anything about it.

Question by same. Do you know where the dividing-line between the city of St. Louis and Carondelet is?

(Objected by same as leading, irrelevant, and incompetent.)

Answer. I know the inhabitants of Carondelet claim as far north as the Sugar Loaf, and the inhabitants of St. Louis claim nearly as far south as Brown's survey, but to my knowledge the inhabitants of Carondelet did claim positively to the Sugar Loaf.

480 (Answer objected to by same as not responsive to the question.)

Question by plaintiff's counsel. Were you present at a sale of commons, claimed by St. Louis, in 1836? If so, state what transpired at said sale.

(Objected by same as irrelevant and incompetent.)

Answer. I was present at the sale in 1838, when the commissioners appointed by the city for the sale of the commons came upon the ground to sell the land south of the Sugar Loaf, when a man by the name of St. Amonde Micheau protested on the ground against selling that part of the ground which he called his property, as a lessee under inhabitants of Carondelet. The commissioners of St. Louis, notwithstanding the protest, went on to sell, and sold, and I think this St. Amonde Micheau bought the land in he claimed himself at that sale, and I think he said it was to avoid difficulty. St. Amonde Micheau was very angry at the time. The place I refer to is where St. Amonde Micheau had his residence, and a shot-tower was on this place, on the bank of the river, and the place was enclosed by a rail fence. I knew St. Amonde Micheau to be there in 1835. I was his attending physician. He was about eight hundred to one thousand feet, more or less, south of the Sugar Loaf.

Question by plaintiff's counsel. Did you see any other inhabitants of Carondelet on the ground, below or at the Sugar Loaf, at the time the commissioners of St. Louis were offering the commons for sale? If so, state what they said or did.

(Objected to as irrelevant and incompetent by defendant's counsel.)

Answer. Several inhabitants of Carondelet were attending the sale. I think some protested against the sale, but I cannot say positively; it is a vague recollection. I value the land between McPherson's and the Sugar Loaf, on each side of the Carondelet road, at the average of about three thousand dollars per acre; some choice piece might be worth more.

Question by same. For a thirty-years lease from this date what will the land be worth per acre, per year?

(Objected to as above by the deft.'s counsel.)

Answer. I think it worth about $20 per acre per year.

Question by same. From the first of January, 1853, what would this ground lease for upon a thirty-years lease?

(Objected to by the same as irrelevant and incompetent.)

Answer. The land would have leased for less in 1853 than now, be-

cause the ground was less valuable then. It would lease for about ten dollars per acre per year from that time.

Cross-examined by defendant's counsel:

The commissioners of St. Louis were on the ground in the summer or spring of 1836. I cannot remember positively. I do not know how many commissioners there were. I do not remember. Some of
481 them, that I don't know the names of, were acting on the part of the city. I think Robert Simpson was one of them, but am not certain. I had lately come here and did not know the people by name, but several men were acting for the city. The conversation between the commissioners and St. Amonde Micheau took place at Micheau's place, just outside of his fence, forbidding them to come in. I was close by Micheau at the time; it may be ten steps, more or less.

Question by defendant's counsel. Give the exact remarks or the substance of what Micheau actually said to the commissioners.

Answer. To the best of my recollection, he said that he was a tenant under the inhabitants of Carondelet, and that he believed this land was belonging to Carondelet. He appeared to be angry, and spoke very loud to some of the commissioners there, and tried to persuade them to not sell, but they went on, notwithstanding his remonstrances, and he bought in the property himself to save difficulty. I heard him say at the time when the property was knocked down to him the crowed laughed at him, and he said it was to save difficulty that he bought it.

Question by same. Has the city of St. Louis been selling commons ever since that time?

Answer. They have made several sales since. I am not certain, but I think some other person besides Micheau protested against the sale at the time. I cannot tell who the other person was. I attended other sales of the city commons before or after the sale of 1836.

Question by same. Did you ever year any objections or protest made against these sales of commons which you attended?

Answer. Not to my recollection, except at this sale of Micheau's. I have no interest in this suit, directly nor indirectly.

N. NICHOLAS DEMENIL.

Sworn to and subscribed before me this 20th day of February, 1858.

M. R. CULLEN,
Notary Public.

I, M. R. Cullen, a notary public for and within the county of St. Louis, State of Missouri, do certify, that in pursuance of the annexed notice came before me N. Nicholas Demenil, at his house on 3d street, city of St. Louis, State aforesaid, who was by me sworn to testify the whole truth touching the matter in controversy aforesaid; that he was examined, and his examination reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid; and his said deposition is now herewith returned.

482 Given under my hand and official seal the 20th day of February, 1858.

[SEAL.] M. R. CULLEN,
Notary Public.

T. Leitensdorfer's test.

THOMAS LEITENSDORFER, being duly sworn, testified: I was born

in Carondelet; am nearly 40 years old. My father, Eugene Leitensdorfer, was one of the board of trustees of Carondelet in 1836. I remember a sale of the Carondelet commons in 1836 or '7, by St. Louis. I was not on the ground at the time of the sale. My father and Mr. Fassen started from my house to oppose the sale south the Sugar Loaf, as trustees of Carondelet.

On cross-examination, witness testified: I know that the town of Carondelet has sold nearly all of the commons south of the Des Peres.

Wilson Primm's test.

WILSON PRIMM, being duly sworn, testified: I was one of the committee on commons and alderman of St. Louis in 1836. It was a long time since the commons of St. Louis were sold, and my recollection of the circumstances is not positive. It was in the month of March or February, 1836. At the commencement of the sale I was present; at the middle of the sale I was not; and at the termination of the sale, when they got down to the southern portion, I was present. I saw some inhabitants of Carondelet on the grounds at the time of the sale below the Sugar Loaf, I remember John Eugene Leitensdorfer, Louis Fassen, and George Claute Brown; there were many others whom I do not *not* recollect; but my attention was called to these persons, who were represented to me to be trustees of Carondelet. There were many others on the ground; St. Amand Micheau was there also. As a member of the board of aldermen of St. Louis, I was cognizant of these things from being frequently applied to by the people of Carondelet. Many of the inhabitants came to me, because I spoke French, I suppose, and among others Mr. Fassen, and requested me to report to the board of aldermen of the encroachments of St. Louis below the Sugar Loaf line. When the sale took place in Mar., 1836, Mich'au was in a quandary. I told him he had better settle with St. Louis. When the committee came on the ground he protested against the sale, and we told him he had better buy himself, and no one would bid against him. He bid it in from the salesman, and then sold it to a man named Wilcox. He forced open Micheau's doors and threw the things out of the window, and there was a lawsuit about it. Leitensdorfer, Fassen, Brown, and Mr. Louis Guion were on the ground protesting against that sale of 1836. From the time St. Louis had come to the Sugar
483 Loaf line, these people were protesting against the sale of the commons of St. Louis, and on the ground that the Sugar Loaf line was theirs. The Sugar Loaf mound is an elevation on the bluff bank of the river, like a sugar-loaf. It is a very prominent point on the bank of the river. After the sales of 1836, I do not recollect anything further on the ground. There were other acts of protest by the corporate authorities of Carondelet, but that was some time afterwards. I believe this survey to be the same one of the old town of Carondelet made by Eiler. I remember the place where the old Montesano house stood. I have never seen the cave spring, the northeast corner of the survey of Eiler.

Question. Do you know where the north line of the village of Carondelet was a' surveyed by Eiler?

I think the survey of Eiler includes the property where John J. Anderson now lives. John J. Anderson is south of Micheau's place, and it is south of the place were Mr. McPherson has fenced up; I know that St. Armand Micheau claimed under Carondelet, as having entered there by permission.

On cross-examination, witness testified:

The south line of McPherson's fence adjoins the north line of Anderson's ground. The subdivisons of the Carondelet commons made by Mackay were, one south of the Des Peres, two north of the river Des Peres. As to the general out-boundary lines of Brown's survey, I believe the subdivisions went out to the out-boundary line.

Admission by plff. about subdivision of Carondelet common.

Plaintiff admits that the subdivisions by Mackay and Eiler included all within the out-boundary lines of Brown's survey of 1834 for Carondelet, and corresponded with its exterior lines, excepting the Jefferson Barracks tract, Julien Choquette's tract, and Pierre Delau de Friget's tract.

Primm's test'y continued.

I believe that Carondelet has sold out all of their lands south of the river Des Peres, and all of her commons, before 1848. They were by public sales, and all made before 1848. I remember 20 years ago where Pourcelli and Dominique Euge lived. Euge lived north of Pourcelli, and then Stein, and then Paupe. The north line of the common-fields is at Jacob R. Stein's lot. The distance from Pourcelli is 5 or 6 arpens; from Dominique Euge it is 4 or 5 arpens. At the sales of the St. Louis commons the excitement was so great that I left. At the cave of McHose and English, George Morton bid 1,400 dollars per acre for the land, and they were drinking. In 1834, when I was preparing for the sales of the St. Louis common, I put them down at $2 an arpen, and was laughed at for putting them so high. They were not good for
484 cultivation, because so broken. "A" street is double. Upper "A" street cuts into Anderson's ground, but does not touch his house. The eastern line of the common-field is between 2 and 400 feet west of the line of 4th street.

Bill of exceptions.

Plaintiff then read in evidence the following documents and papers, to each of which defendant objected as irrelevent and incompetent, but the court admitted the same, and defendant excepted.

Proceed's of inhab't's of Car., signed by P. D. Barada et al.

1st. Proceedings of the inhabitants of Carondelet of 2d day of July, 1836—signed Peter D. Barada and others, as follows:

On this 2d day of July, 1836, the following subscribers, inhabitants of Carondelet, met together, and, after some discussion, concluded the *the* following resolution, to wit:

That whereas the inhabitants of St. Louis hade, on the day of March, 1836, sold part of the commons adjoining the commons of said inhabitants of Saint Louis, belonging to the commons of Carondelet, we authorize the board of trustees of Carondelet to meet the said inhabitants of St. Louis, and to compromise with them on the best and fairest terms in relation to said pt. commons.

Peter D. Barada, esq. Archilles Solomon.
Henry Chouquet. Fs. Hy. Le Favre.

his
Joseph + Vien.
mark.
his
John B. + Menard.
mark.
his
Paul + Robert.
mark.
William Pilche.
Joseph + Courtois.
George + Shoults.
Joseph + Guge.
St. Amd't Micheau.
G. Bruye.
Joseph Le Blond.
Isadore Barada.
J. B. Delile.
Joseph Chatillion.
David Briggs.
his
485 Charles + Sangunet.
mark.
his
Peter + Delor.
mark.
P. J. Shoults.
Leon Levy.
Edm. Saulnier.
J. Hoets.
his
Louis + Roy.
mark.
his
Joseph + Lemas.
mark.

Amable Chartran.
John Cromwell.
Joseph Guion.
Israel Shoults.
Paul + Wanard.
N. B. Franklin.
his
Joseph + Shoults.
mark.
his
Joseph + Vally.
mark.
his
Bertheleme + Guion.
mark.
his
Antoine + Courtoi.
mark.
his
Yesent + Pigon.
mark.
Ncs. Paupe.
H. P. Werner.
G. Fassen.
Eugene Leitensdorfer.
Augus. Gamache.
Louis Le Blond.
Pires + Chatillion.
his
Thomas + Chartrand.
mark.
Amis Wailst.
J. Maeder.

Letter of Bryan Mullanphy to mayor of St. Louis.

2d. Letter of Bryan Mullanphy, of 16th May, 1839, to the mayor of St. Louis.

MAY 18*th*, 1839.

GENTLEMEN: I send you a copy of the document that I presented to the board of aldermen of this city. They referred *to* same to the committee on commons.

I have the honor to be, with much respect, your obdt. servant,
BRYAN MULLANPHY, *Atty.*

To the hon. the board of trustees of the town of Carondelet.

ST. LOUIS, 16*th May*, 1839.

GENTLEMEN: The inhabitants of the town of Carondelet are about to make a permanent disposition of their commons.

The commons include the land south of a line running nearly east and west, intersecting Sugar Loaf hill. You can ascertain the fact to be as here stated by application to Pierre Chouteau, sen'r. The mayor, aldermen, and citizens of the city of St. Louis have sold as commons lands south of said line, and are receiving rent or interest from the purchasers.

The inhabitants of Carondelet are bound to enforce their right, unless the same be compromised, which compromise they are now willing to make on reasonable terms, and have deemed it proper to make this advance towards an amicable settlement with you before making application to the legal tribunals of the county.

486 A speedy answer will much oblige them, the inhabitants of the town of Carondelet.

By their attor., BRYAN MULLANPHY.

To the mayor, aldermen, and citizens of the city of St. Louis.

Res'n of board of aldermen of St. Louis on aforesaid letter.

3d. The resolution of board of aldermen of St. Louis of 17 May, 1839.

FRIDAY, *May* 17, '39.

"A letter was received from the inhabitants of the town of Carondelet, by Bryan Mullanphy, their atty., asking for and proposing to settle a claim by them made to a portion of the St. Louis common without recourse to law, which was referred to committee on common."

The above is a correct extract from the proceedings of the board of aldermen of the above date, as recorded on page 64, vol. 5, of records of board of aldermen of the city of St. Louis.

JOHN B. HIGDON,
Clerk of Board of Aldermen.

FEBR. 2, '66.

Field-notes of Brown's survey of com. fields of Car., Mar., 1834.

4th. Field-notes of Brown's survey of the common-fields of Carondelet between 18th and 25th March, 1834.

Field-notes of Joseph C. Brown's survey of the exterior boundary-line of the common-field of Carondelet, as executed in the month of March, 1834. (See his certificate below.)

I now go to the N. W. corner of the common of Carondelet as established by me; thence—

	Chains.	
N. 14°	40	E.* (*This course corrected for falling off is N. 14° 10 E.
	8 00,	A stone the N. E. corner to Delor, and S. E. corner to Francois Roy, formerly, but now Benoist Marechal.
	12 53,	A stone 4 lks. on the left.
	17 24,	A stone S. E. corner of Gamache.
	21 81,	Gamache's N. E. corner-stone; from this stone the point or stone 10 arpens westward bears N. 57 W., nearly, say 2 minutes less; this stone N. E. corner is 3 lks. on the left; set to it.
	30 55,	A stone 5 lks. on the left; set to it, Julien Chouquette's S. E. corner.
	34 85,	J. Chouquette's N. E. corner 2 lks. left, a stone at this corner; set to it.
	40 65,	A stone.
487 44	43,	Is a stone, which I am told I formerly set when I surveyed the common of Carondelet, as I was then directed, and which they have have considered as their N. W. corner. This stone is 8 lks. on the left.

45 02, A stone the N. E. corner of C. Shoultz, and S. E. of Lambert Lajoye; I set to this stone.
49 38, A stone 5 lks. on left; set to it.
53 76, A stone 7 lks. on the left, Julien Roy's N. E. corner; set to it.
58 13, A stone 5 lks. on the left; set to it; the Sugar Loaf brs. S. 66 E.
62 48, A stone 9 lks. on the left; set to it. This is the N. E. corner of 1½ arp's in front, formerly belonged Peter Martin De Laducier, being the N. E. corner of the common-fields; hence the Sugar Loaf mound lies S. 61° 10 E.; thence along the N. bdy. of the common-fields.

N. 56° 15 W.
14 35, Intersect the line of St. Louis common, and set a post therein 8 chs. and 17 lks. N. 8 W. from a post set as a corner of the survey of the said common, from the post set here at the point of intersection aforesaid.
A red oak 3 in. in dia. brs. N. 24 E., 79 lks. dist.; and a red oak 3 in. in dia. brs. N. 7½ E., 98 lks. dist.; from the post measure along
N. 8° W. the line of St. Louis common.
25 08, The S. E. corner-stone of Prairie des Noyer fields; this stone is 8 lks. to the left; thence

N. 83½ W.
00 62, Set a post for a corner to frac'l sec's 4 and 5, tp. 44 N., r. 73 of the 5th p. m., from which a hickory 4½ in. in dia. brs. N. 55 E., 65 lks. dist., and a hickory 3½ in. in dia. brs. N. 11 W., 30 lks. dist.
South Between said sec's 4 and 5,
22 14, Intersect the N. bdy. line of the common-field of Carondelet, where set a post corner to frac'l sec's 4 and 5 aforesaid, from which a red oak 5 in. in dia. brs. N. 20½ W., 57 lks. dist., and a red oak 4 in. in dia. brs. N. 33 E., 114 lks. dist. This fra'l ¼ mile over land good for cultivation, and lies well; is very bushy, with hickory and red-oak bushes and hazel. I return to the post at the intersection of the line of the common-fields of Carondelet, with the line of the common of St. Louis.
488 Thence continue the line of the N. bdy. of said common-fields of Carondelet.
N. 56¼ W. Continuing the measure from the N. E. corner thereof,
19 37, To the corner-post in said line to sec's 4 and 5, in tp. 44 N., r. 7 E. of the 5th p. m., above described.

MARCH 18TH, 1834.

I, Hyacinth Pejo, do solemnly swear, in presence of Almighty God, that I will well and faithfully perform the duties of flagman on all lines I may assist to survey, to the best of my ability; so help me God.

his
HYACINTH + PEJO.
mark.

Sworn to and subscribed before me this 19th day of March, 1834.
JOS. C. BROWN, *D. S.*

N. 56¼ W.
30 57, Continue the N. line of the common-fields; a stone in said line.

39 00, A branch 4 lks. wide brs. S.
58 33, A stone 20 lks. to left; set to it.
80 00, A branch 6 lks. wide runs S.

MARCH 19TH, 1834.

I again go to the post in the S. bdy. line of Prairie des Noyer fields, corner to frac'l sec's 4 and 5, in tp. 44 N., range 7 east of the 5th p. m.; thence

N. 83½ W. (Connected this course for falling off to N. 56¼ W.)
40 00, Set a temporary post at intersection of the north boundary-line of the common-fields of Carondelette 67.16 chains westward of the N. E. corner thereof.

I now continue the northern boundary of Carondelet common-fields,

N. 56 W. counting the measure from the N. E. corner thereof.
85 50, Intersected the St. Louis road near the 5th mile-post on said road to Gravois.
116 27, A stone the N. W. corner of Carondelet common-fields set of old, and is 10 links on the left; from this corner-stone I run,

S. 15½ W. Along the west boundary-line of the common-fields of Carondelet.

480 4 38 A stone.
8 76, A stone.
17 52, A stone 2 lks. left.
21 47. Intersected the south line of the Prairie des Noyer common-fields, where set a post 1.40 chains eastward of the S. W. corner of said common-fields.

Set a post at said S. W. corner in place of the former post. I find the stumps of the witness-trees, formerly taken to this corner, answer to the description of the trees but those trees being down, I take others, to wit: A red oak 6 in. in dia. brs. 69 W. 51 links dist., and a post-oak 5 in. in dia. brs. S. 67½ W. 48 lks. dist.; at said point of intersection of the west boundary-line of Carondelet fields with the south boundary-line of Des Noyer fields, mentioned on the former page, I set a post, from which a post-oak 3½ in. in dia. brs. S. 21 E. 69 lks. dist., and a post-oak 4 in. in dia. brs. N. 15½ E. 77 lks. dist.; from this post I run along the south boundary

S. 83½ E. of Des Noyer fields without measuring, and find this course leaves the temporary post to be 120 lks. on the left, which post I move 53 lks. northward into the true line of Des Noyer fields; thence I run,

N. 82¾ W. counting from the aforesaid corner to fractional sections
41 05, 4 and 5, to the true point of intersection of the south boundary-line of Des Noyer's fields with the north boundary-line of Carondelet fields, where I set a post 68.36 chains westward of the N. E. corner of Carondelet fields, from which a post-oak 4 in. in dia. brs. N. 56 W. 49 lks. dist., and a black-jack 6 in. in dia. brs. S. 75 W. 96 lks. dist. I return now to the intersection of the west line of Carondelet fields with the south line of Des Noyer fields, and continue the said W. line,

S. 15¼ W. counting from the N. W. corner of Carondelet fields.
21 88, A stone.
27 73, A stone near Cashman's N. W. corner of fence.

32 12, A stone.
36 49, A stone 2 lks. right.
40 86, A stone 6 lks. right; set to it.
45 23, A stone.
49 00, A branch 3 lks. wide brs. S. westward.
490 54 00, A stone 3 lks. right; set to it.
58 26, A stone on east edge of St. Louis road 7 lks. on the right; set to it.
67 12, A stone 5 lks. on left.
72 58, A stone 3 lks. left.
80 23, A stone by Jos. Shoults.
88 97, A stone 9 lks. on the right lies flat, but is considered as at the corner of the angular turn in the west boundary of the fields; thence I run,

S. 26° 10 W.
4 40, Broken fragments of a stone, said to have set here in a road; a fence on the left indicates the place as a corner between two lots of the field lands.
17 53, A large stone 5 lks. to the right; thence,

S. 35½ W.
8 67, A stone 13 lks. to left; set to it.
15 93, An old stone 3 lks. to right; set to it.
26 10, The S. W. corner of the field 2 lks. on the right.
S. 56° 15 E. Connected the south boundary of said fields to *to* a point opposite the stone, which is 91.36 chains westward of the S. E. corner of said fields, where set a post 69 lks. southward of said stone.

MARCH 25*th*, 1834.

I now correct the remainder of the said line from the S. E. corner of said field; running
N. 56° 15 W., I correct to the above-named post, set 96 lks. southward of the said stone.
Marginal note.—"The whole length of this line is 118.16 chains."

Certificate.

I certify that the foregoing notes on pages 1 to 54, (pages 1 to 5 inclusive of this,) inclusive, are the original field-notes of the survey of the outlines of Carondelet common-fields, of the common of Carondelet, and of the survey of Gabriel Constant, and of their connections with the lines of the public and private surveys as executed by me in the month of March, 1834, under instructions from Elias T. Langham, surveyor of the lands of the United States in the States of Illinois and Missouri, bearing date the 10th of February, 1834.
April 9th, 1838.

JOS. C. BROWN.

491 OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 26th, 1855.

(For plat see original, page 224.)

SURVEYOR-GENERAL'S OFFICE,
St. Louis, the 10th April, 1850.

The survey No. 3103 of the common-field of Carondelet, in Ts. 44 and 45 N., R. 7 E. of the 5th p'l meridian, is correctly delineated on the above plat, according to the field-notes of the survey thereof, on file in this office, which have been examined and approved. Said survey was executed by J. C. Brown in the first quarter of 1834, under instructions of the surveyor-general dated the 10th of February, 1834, and was paid for in the 2d quarter of 1838, and charged in the account of the surveyor-general for that quarter, voucher No. 3; the lines of the survey being 6 miles and 19.58 chains, and the connecting lines 1 mile and 22.80 chains; together, 7 miles and 42.38 chains.

(Signed) M. LEWIS CLARK,
Surveyor-General.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 26th, 1855.

I hereby certify that the above plat of the common-field of Carondelet, designated as survey No. 3103, and its connections with the adjoining and interfering surveys, also the certificate of the late surveyor-general, M. Lewis Clark, attached thereto, are correctly copied from the original preserved on pages 23*a* of the book of miscellaneous plats, in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

The foregoing notes and the certificate attached thereto are correctly transcribed from pages 167 to 181, and pages 185 of volume 29, of Missouri private surveys, in this office. The pages 1 to 54, referred to in the above certificate, are the numbers originally given them by the deputy, and have since been altered into 131 to 184, after their binding into said volume.

JNO. LOUGHBOROUGH,
Surveyor-General.

Field-notes of Brown's sur. of com's of Car., March, 1834.

5th. Field-notes of Brown's survey of the commons of Carondelet, of March, 1834.

492 I, Isaac Woods, and I, Gabriel Constant, do solemnly swear, in the presence of Almighty God, that I will perform the duties of chain-carrier; that I will carry the chain horizontally, and will plumb the pins so as to obtain the true horizontal length of all the lines I may assist to measure, and that I will truly report the same to the best of my ability. So help me God.

ISAAC WOODS.
his
GABRIEL + CONSTANT.
mark.

Sworn to and subscribed before me, this 11th March, 1834.
JOS. C. BROWN, *D. S.*

I, John Baptiste Gamache, and I, John B. M. Chattillon, as markers, and I, Benoit Marichal, as flagman, do solemnly swear, in the presence

of Almighty God, that I will perform the duties of markers and flagman as I may be directed, upon all the lines I may assist to survey, to the best of my ability. So help me God.

JOHN BAPTISTE his + mark. GAMACHE,

JOHN B. M. his + mark. CHATILLON.

BENOIST his + mark. MARICHAL.

Sworn to and subscribed before me this 11th day of March, 1834.

JOS. C. BROWN, *D. S.*

On this the 11th day of March, 1834, commenced to survey the common of Carondelette, that is to say: begin at the S. E. corner of the common-fields lot claimed by Brigs, which is the N. E. corner of Clermon Delor, and corner where the line commences its turn to run N. 14° 40 E., the compass being adjusted to 8° east variation; thence run said corner N. 14° 40′ E., 8.75 chains, a very old stone in the line, (that is, set of old,) N. E. corner of Hubert Tarbeau, and S. E. corner of Louis Tarbeau; at 2 arp's more sought but did not find a corner; 17.48, a very old corner-stone; 21.86, an old corner-stone; 26.25, an old corner-stone; 26.96, set a stone in the east boundary-line of the common-fields, 70 links northward of a stone, the S. E. corner of a tract of 1½ arpent front, said formerly to have belonged to J. B. Gamache, and now to Thos. Chartrand; the stone here set *set* by me is 18 inches long, 4 inches thick, and 12 inches broad, set 9 inches deep, edge east, the N. W. corner of the common of Carondelet, for correction of the common of Carondelet with the common of St. Louis, measure
493 from the N. W. corner-stone of the common of Carondelet N. 14° 40′ E., along the front line of the common-fields, 3.65 chains, a stone corner appears to have been reset, being in a path; 5 ch. 72 links intersect the south boundary-line of the common of St. Louis; 4 chains 34 links east of the S. W. corner of St. Louis common, according to a late survey thereof by me, from the N. W. corner of the common of Carondelet; S. 82 E., along a new line, the north boundary of common of Carondelet; 35.00 chains, middle of the road leading from St. Louis to Carondelet; 40.00, just east the precipice of stone on river Mississippi; 41.35, set post just at ordinary high wa'r, as N. E. corner of the common of Carondelet, from which a sycamore 10 inches in diameter bears S. 12 E., 24 links, and an elm 11 inches in diameter bears N. 46 E., 38 links distant; thence for connection with the S. E. corner of the common of St. Louis, S. 56° E., 78 links; thence N. 25° 15′ E., 11 ch. 90 links, to the S. E. corner of St. Louis common. Again, begin at the N. E. corner of the common of Carondelet; thence S. 56° E., to near the water's edge, 0.78 chains; thence S. 32° 45′ W., down the river's edge, 41.50 chains; thence continue down the river, S. 35° W., 18.00 chains, short 3.58 links, is the S. edge of the street at Colburn's tavern; S. 52 W., 8.72, S. 38 W., 38.00, S. 30½ W., 20.00, S. 14 W., 11.00, to lowest house of the village, about 250 lks. on the right; S. 5° E., 13.50, S. 30¼ W. 44.00, S. 33¾ W., 13.87. S. 47 W., 9.00, mouth of river Des Peres; S. 61½ W., 2.45, to a sycamore on S. of river Des Peres; offset at right angles, viz: N. 28½ W., 73 links base; thence to said sycamore on the S. of river Des Peres, S. 45½ W., making the angle 16° on said base of 73 links, making 2.54 chains across.

11th MARCH, 1834.

Begin again at the first point of beginning; thence S. 26° 10′ W., 17.50 ch., set a temporary post; thence go to an old stone from which back toward said temporary post is N. 36° E., 8.66 ch. [see page 36, forward] to temporary post above set, which is links on the right; again return to said stone and continue S. 36° W., and counting the measure from the said temporary post, 25.70, to a temp'y post set.

I again return to the stone old corner last named on the last page before; thence S. 48° 15 W.; 7.32 ch.. an old set stone; 10.15, fence; 17.57, a stone set formerly; at 4.45 further on this line is a stone lying on the ground, but old inhabitants say the last stone set as above mentioned is the S. E. corner of the common-field.* I commence then and run N. 56 W. 38.00 chains, a branch 10 links wide runs south; 86.86 chs. a stone in the line 27 links on the right set in to the line; thence
494 N. 55 50 W., continued the measure as from the beginning of this line; 113.66, a stone on Alvaris' line 92 links on the left; thence S. 35° W.† 60.00 chains, to bank of river Des Peres, (Alvaris' line cor.,) line of common 52 links on the right, which runs eastward for a connection to Bell Point. I begin in the line of the common at a point 55 chains south'd of the S. W. corner of the common fields of Carondelet; thence S. 44 E. 25.00, set a temporary post; thence S. 20 W. 2.05 ch., set a temporary post S. 46½ W. 6.00, west 2.77, N. 72½ W. 4.22.

12th MARCH, 1834.

I go to the west boundary of the line of the common on the south bank of river Des Peres, where I find a stone, whence, on a base of 50 links, the angle across to post set last evening north the river is 18°, and the distance is 1.53 chains; said post is westw'd the line as from the stone 9 links; continue the line from this stone S. 35° 30 W., counting the measure from S. W. corner of the common-fields; 120.00 chains, to Mr. Saunders' door on the west, 35 l.; 193.85, a spring branch, 4 links wide, bears eastw'd, 201.36‡; Alvarez's S. E. corner-stone is 18 links west, set into the line at stone, and continue same measure; 204.00, a branch 10 links wide bears east'd, 230.00; I here find the line is 224 links on the right; I set here a temporary post, and run back N. 36° E.; 24 chs. 50, a branch 10 links wide bears eastw'd; 28 ch. 71 lks., intersected Alvaris' line 37 links W. of this line, and set a post thereon 183 links west'd of his S. E. corner-stone, from which a hickory 11 inches in diameter, marked as a eight tree of old, bears N. 36 E. 39 links, and a white oak 25 inches in diameter bears N. 54° W. 52 links distant; from this post along the south boundary of Alvaris' land, N. 54° 20 W.; 14.06 chains, to the corner to sections 13, 14, 23, and 24, in township 44 north, range 6 east of the 5th principal meridian; from this a bearing tree, a black jack, the same heretofore taken when this corner was first established, bear S. 43 W. 50 links, and a black jack, the same before taken, bears N. 48 E. links distant; this corner is as nearly set in Alvaris' line as I can set it, as is indicated by an old sight tree about 30 links east of the corner, which would make it about 2 links north; I set a stone here in place of the old post; from this corner I measure south

* See page 36 for the corner by me set 4 ch. 50 l., S. 56 E. from this stone, and page 51 for the true corner, viz: N. 56¼ W.

†This course corrected for offset is S. 35¼ W.

‡In making the survey No. 3,067 in the name of Gabriel Cerre, in Jan'y, 1838, I find the measure of Alvarez's line, as here noted, is 8.61 chains too long, and that 8.61 chains must be deducted from it.

3d April, 1838. J. C. BROWN.

between sections 23 and 24 in said township, to connect south to the line of the common; 9.75 chains, a branch 10 links wide comes from west; 10.50, cross said branch again; 24.31, intersect the line of the common, and set a post,* from which a black-jack 6 inches in
495 diameter bears N. 38½ W. 55½ links, and a post-oak 15 inches in diameter bears N 7¼ E. 129 links distant; thence S. 36 W.; 0.90 chains, an old stone in the line of the common;† 8.90 chains, the temporary post set at 2.30 chains, where we offset into the line, as we thought, but find we had at 10 links west the line. I here commence the original measure from the S. W. corner of the common-fields of Carondelet; 263.90 chains, intersect the road leading to Jefferson Barracks; 288.50, set a post 60 links to the right at the intersection of the line of the common with the line between sections 23 and 26, township 44 N., range 6 east of 5th principal meridian, from which a red oak 9 inches in diameter bears N. 47¼ W. 98 links, and a red oak 14 inches in diameter bears S. 43½ W. 161 links distant; thence west between sections 23 and 26 in said township; 2.26 chains to a quarter-section corner, from which a *a* post-oak 16 inches in diameter bears N. 88 W. 13 links, and a red oak, the same formerly taken, bears N. 39 W. 134 links distant; the other bearing tree formerly taken is fallen, but the stump agrees to its recorded position, and the signs on the log not yet rotten.

13TH MARCH, 1834.

3.20 chains, set a temp'y in Jona. Park's field; 3.35, river Gravois, 30 links wide, runs east; 361.02, set a post 54 links to right, at the intersection of the line of the common with the line between sections 26 and 27 in township 44 north, range 6 east of the 5th pl. meridian, from which a red oak 12 inches in diameter bears S. 29 E. 23 links, and a white oak 14 inches in diameter bears N. 81 E. 103 links distant; thence north between sections 26 and 27 in said township; 17.57 chains, to the quarter-section corner as ascertained by the witnesses, one of which, a white oak before taken, stands, is 24 inches in diameter, and bears S. 47° W. 141 links; the other is down a white oak 28 inches in diameter, bears N. 48 E. 118 links distant.

NOTE.—These distances on the western boundary of this survey were all counted from the S. W. corner of the common fields of Carondelet, but seeing there is a break in the line, and an offset at Alvaris' corner, wherefrom a new measure commences, I deduct 201.29 chains from each distance entered on the line southward of that corner, to get the true distance from said offset corner.

9th April, 1834.

J. C. BROWN, *D. S.*

I return and continue the line and former count of measure from the S. W. corner of the common-fields, from the post in the said line corner to fractional sections 26 and 27 aforesaid; 388.45 chains inter-
496 sected the line between sections 27 and 34, where set a post in the line of the common corner to fractional sections 27 and 34, township 44 north, range 6 east of the 5th principal meridian, from which a post-oak 25 inches in diameter bears N. 17 W. 24 links, and a red oak 13 inches in diameter bears S. 85 W. 87 links distant; thence west between said sections 27 and 34, 25.19 chains, to quarter-section corner, 42

* This post is 19.81 chains southward of the corner in Alvarez's south boundary, at the intersection thereof with the line of this survey.
9th April, 1834. JOS. C. BROWN, D. S.

†Corrected; see page 23. Course is S. 36° 20′ W.

links south, both bearing-trees stand and agree to the description formerly given.

I return and continue the line of common S. 36°* W., counting the measure from the S. W. corner of the common-fields of Carondelette, 416.00 chains, road leading from Gravois to Jefferson Barracks; 433.30, I find a stone lying on the surface; there is no line from it or near it; the line continues the same direction; 443.00, Mr. Brown lives near, on the right; 473.10, the S. W. corner of the common of Carondelette, as shown to me by the inhabitants of said village, and which corner is a cluster of stones 53 links on the right; set a post at the corner, from which a post-oak 20 inches in diameter bears N. 71½ E. 66 links, and a white oak 16 inches in diameter bears S. 13 E. 88 links distant; thence along an old line, the south boundary of the common, S. 53½ E. 22.00 chains; set temporary post and seek the line; find the corner to sections 33 and 34, township 44 north, and sections 3 and 4, township 43 north, range 6 east of the 5th principal meridian from this corner, where set a post, (the bearer before taken, viz:) a post-oak 12 inches in diameter bears N. 63 E. 40 links, and a red oak 15 inches in diameter bears S. 83½ W. 78 links distant; thence east between sections 3 and 34 in said townships; 38.62† chains intersected the line of the common and set a post; then corner to said (fractional) sections 3 and 34, this post 28 links east'd the temporary post set as above noted, and 21 links south'd at right angles, from which corner post a red oak 13 inches in diameter bears S. 38½ E. 64 links, and a post-oak 18 inches in diameter bears S. 55 W. 53 links distant; thence continue the line of the commons, measure from the S. W. corner thereof, S. 53‡ E.; 82.70 chains, set a post 76 links on the right at the intersection of the line between sections 2 and 3, township 43 north, range 6 east of the 5th principal meridian, from which post a red oak 14 inches in diameter bears S. 47½ W. 70 links, and a red oak 12 in. dia. bears S. 6½ E. 74 links; thence south between said sections 2 and 3, 0.20 chains, to the quarter-section corner.§

NOTE.—This line forming the western boundary of this survey from Alvaris' line, corrected as corner on account of the several offsets thereunto, is 36° 20′ W.

There being evidently some error in the work, I deem it proper to examine where it is, and therefore I run from this post south 40.40 chains, section corner.

497 (*) I was told this was the corner, but had not sufficient evidence of the fact; only one tree as a witness is to be seen with any indications of a witness; and on cutting into that, I could not, on account of the decay, see the ½ S. mark; there was a dead and partly burnt tree standing in place of the other witness, but the closing to it was bad, and so I ran it over.

I then retraced and remeasured the line of the common back to the post set therein between fractional sections 3 and 34, and find no error.

14TH MARCH, 1834.

I again measure the line between sections 3 and 34, and find the distance 5 chains short of the former measure, it being 33 chains (65 l.) instead of 38 chains, (62 l.,) as by that measure.

I return to the post in the line of the common between sections 2 and 3, t. 43 N., r. 6 E., S. 53|| E.; 149.90 chains, set a temporary post 70 links

*Course corrected to S. 36° 20′ W. See page 23.

† The distance found to be erroneous, and is correcte l. See page 27–28, where the true length is set—33 chains 62 links.

‡ This course corrected to S. 52½ E. See page 28.

§ Course corrected to S. 36° 20′ W. See page 23.

|| This course corrected for off-sets from S. W. corner of this survey to this place is S. 52½ E.

on the right at supposed intersection of the sectional line, as indicated by some marked trees. Before I establish this corner, I run thence west along the line between sections 2 and 11, township 43 north, range 6 east of the 5th principal meridian, 12.58 chains to the quarter-section corner; witness trees to which both stand and agree to description, each in course, but each 1 link more in distance; set a post in place of corner. I return and establish the corner on the line of the common at the temporary post above set, being the true place of corner to section 2 and 11, in township 43 north, range 6 east of the 5th principal meridian, from which a red oak 14 inches in diameter bears S. 4 E. 69 links, and a hickory 10 inches in diameter bears S. 72½ W. 72 links distant from this post.

I continue the line of the common, counting measure from S. W. corner thereof, S. 52½* E., 185.00 chains, set a post 56 links on the left at intersection of the line of the commons with the line between sections 11 and 12, in township 43 north, range 6 east of the 5th principal meridian; from this corner post a red oak 18 inches in diameter bears S. 37 W. 29 links, and a red oak 20 inches in diameter bears S. 1½ E. 127 links distant; thence south, between sections 1 and two aforesaid, 20.36 chains, to quarter-section corner; both witness trees formerly described are still standing, green, and agree to the former description, 53 E.,† 287.30 chains; here I intersect a line run east of west, but find no corner on it; in seeking the corner I by accident find another line run east from a corner, and also west from said corner, one tree, a red oak, 12 inches in diameter, I suppose may be one of the witness trees, taken as
498 described, bearing S. 21 W., 36 links distant; the other I see no trace of answering to the description furnished me, but I set the post for corner, and run east, 12.53 chains, to the brow of the prairie, and then set a temporary post south, 26 links from the S. E. corner of the common of Carondelette; I return and take another bearing tree, from corner to sections 7 and 12, in townships 43 and 43 north, ranges 6 and 7 east of the 5th principal meridian, to wit, a red oak 13 inches in diameter bears N. 57 E., 37 links distant; thence I run north, between the sections 7 and 12 aforesaid, 9.71 chains intersected the line of the common of Carondelette, 282.60 chains eastward of the beginning of the line, from the S. W. corner thereof, and there set a post, corner to said fractional sections 7 and 12, from which a post-oak 14 inches in diameter bears S. 18 W., 47 links, and a post-oak 12 inches in diameter bears S. 14½ E., 79 links distant from this post. Continue the line of the common measure counted from S. W. corner thereof, 4.70 chains, eastward from this last post to point of intersection noted on page 31, 287.30 chains from the S. W. corner of the common, which intersection is 110 links on the right 298.14 chains; the S. E. corner of the common, on the brow of the hill near the river Mississippi, 13 links, on the right, being a post-oak 14 inches in diameter, with a large stone, curiously shaped, leaning against it, or the stone is the corner.

15 MARCH, 1834.

S. 84° E. 2.43 chains. From said corner to moderate high-water mark; then meander up the river.

N. 12 E. 31.00.
North 15.00.
N. 6½ E. 17.00.

*The course of this line from the post corner described on the preceding page, to the S. E. corner of this survey on the river, is S. 53½ E., corrected from falling off.

† Corrected to S. 53½ E.; see page preceding.

N. 17 E. 18.50. (At 9 ch. is mouth of Martigny Creek.)
N. 56 E. 3.00.
N. 18 E. 15.00.
N. 10½ E. 8.00.
N. 11¾ E. 47.34.
N. 2½ E. 9.00.
*N. 10 E. 31.00. *Also to flag-staff at Jefferson Barracks, N. 3.00† W.
†N. 19¼ E. 52.38. †Hence to said flag-staff at Jefferson Barracks.
N. 10 E. 34.20.
N. 1 W. 17.50.
N. 5¾ E. 11.00.
N. 3½ E. 6.00.
N. 8¾ E. 5.36.
N. 12 E. 9.00.
499 N. 24½ E. 11.00.
N. 31 E. 10.00.
N. 44 E. 9.00.
N. 47½ E. 9.50.
N. 43½ E. 10.88. The sycamore, x, noted on page 8, standing on the south bank of mouth of river Des Peres, to which an angle was taken.

17 MARCH, 1834.

At 3 links northward of the temporary post mentioned on page 9—that is, on the course S. 21° 10′ W., at 17.47 chains, set a stone, which had formerly been set, which is 27 inches long, 5 inches thick, and 8 inches wide, for corner; thence S. 36 W., 15.85 chains, cross the fence, which forms the west boundary of 4th street, or nearly so; the fence bears N. 45½ E., 25.64; set two stones for S. E. corner of the common-fields, one of which stones is 15 inches long, 3 inches thick, and 12 inches broad; the other thicker and longer, 8 inches broad; thence N. 56 W., 4.50 chains to a stone, which had been considered the S. E. corner of the common-fields.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, April 9th, 1855.

I certify that the foregoing is a correct copy of all the returns on file in this office made by Jos. C. Brown of his survey of the common of Carondelette under contracts of the 10th March, 1834.

JOHN LOUGHBOROUGH,
Surveyor-General.

6th. Register's plat of survey of 1821, May 14th.
(For plat see original, page 233.)

Depo. of Zeno Mackay.

7th. Deposition of Zeno Mackay, taken in perpetuation in 10th Sept., 1852. He is admitted to be dead. So much of it read as applies to the rebuttal, as follows:

My father, James Mackay, who was deputy surveyor under the Spanish government during his life-time, when we were passing to and fro from St. Louis to Carondelet, would point out to me the dividing line between the commons of St. Louis and Carondelet. The line as pointed out to me by my father was a direct line from the Sugar Loaf, commonly called the "Pain de Sucre," to the northeast corner of the com-

mon-fields of Carondelet, and from my own knowledge, this line
500 was claimed by the old inhabitants of Carondelet as the dividing line of the commons of St. Louis and Carondelet.

After the incorporation of Carondelet as a town by the county court of St. Louis County, I was employed by the corporation authorities of the town to lay off into lots and blocks a portion of their common north of the town, and I was directed by them not to survey beyond the northern line of Brown's survey of the Carondelet common; and these directions were given to me upon the ground, as expressed by them, that as there was a contest between Carondelet and St. Louis as to the title to the land lying between Brown's north line and the Sugar Loaf line, as above mentioned, they did not wish to make any disposition of any part of their common north for the present, when it was subject to dispute; that what they disposed of they wanted to give a clear title to, and one which would not be *be* the subject of the controversy. Under these directions, I proceeded to survey, lay off, and plat the portion of ground lying between the incorporated town and said Brown's line. This was done by me in about the year eighteen hundred and thirty-nine.

Question. What was the extent of common claimed by the inhabitants of Carondelet north of the town?

Answer. It was all that portion of land bounded on the west by the common-fields of Carondelet, south by the old incorporated town, east by the Mississippi River, and north by the said Sugar Loaf line as before mentioned.

Question. Do you own any property, or are you interested in the Carondelet common north of the town or village of Carondelet?

Answer. I own no property, and I am not interested in that common.

Fred'k Mosberger's test.

FREDERICK MOSBERGER, being duly sworn, testified: I have been a clerk in the surveyor-general's office for nearly 12 years from December, 1856. I have examined for instructions for the survey of Rector of Carondelet commons, but could never find any. I have never found anything. I have examined more than once. I have examined lately. I never could find any instructions or any contract for the Rector survey of the commons. These old transactions are not recorded. I have not seen anything of that sort; the field-notes of Rector's survey look like a bare memorandum; they are not signed. There is no oath of chain-carrier, a flag-man, or anything. The surveys of the old times have no oath; it is so now. I have compared Rector's survey with Brown's survey of 1834, for the commons of Carondelet, and have platted them both. I cannot make Rector's survey close according to the field-notes. The field-notes differ very considerably, nearly 20 chains or $\frac{1}{4}$ of a mile.
501 Brown and Rector do not correspond as to the northern line. I protracted both surveys on one piece of paper. It is my impression that Brown's survey goes furthest north.

The distance from the S. E. corner of the common-fields of Carondelet to the northwest corner of the common according to Rector is 75 chains 13
Same according to Brown..... 70 " 7

Difference..... 5 " 6

Rector's north line according to the field-notes would be 5.06 chains north of Brown's; Rector's appears not to have gone as far south as Brown' by 30 chains.

On cross-examination witness testified: There are two bends in the eastern line of the commons of Carondelet; Rector makes a call for only one bend, and Brown for two. It is not expected that the survey should be mathematically correct; one chain in a mile is allowed. Surveys do not close exactly. There was no actual survey of the out-boundary of Carondelet. It was made from the field-notes of Brown. The field-notes of Brown were followed in making the plat of the out-boundary. I did not use Rector's survey, but Brown's. The field-notes of Rector's survey do not agree with the approved plats as they are now on file in surveyor-general's office. The inhabitants of Carondelet were not called upon to prove the out-boundary lines of the common-fields and village lots of Carondelet, on the ground the plat was made from Brown's survey of the commons.

On re-examination, witness testified: The plat was made in 1853, of the out-boundary line. The general was in doubt whether he ought not to make the out-boundary by actual survey. Fractional section 9 was platted before 1844, before I came into the office. It was platted by Capt. Mayfield, and he died in 1838.

Julius Pitzmann's test.

JULIUS PITZMANN, a witness for plaintiff, testified: I am deputy county surveyor. I have examined Rector's and Brown's field-notes of the surveys of the Carondelet commons. I have platted them according to their courses and distances as nearly as it could be done. Mr. Rector's line is north of Brown's survey, and falls short on the south. Rector is north of Brown, on the line of common-fields of Carondelet about five chains. Brown's survey runs 35.67 chains further south than Rector's; I could not make Rector's survey close without correcting that course. The erroneous course is south 21° west, and the true course is south 31° west. I have constructed this plat with a great deal of care. I have constructed it very accurately. My profession is that of a civil engineer and surveyor. Commencing at the northwest corner, and running first south 16° west, and south 21 west from
502 there, would bring the line east of the common fields. The effect of this variation from the true line would be to throw the line west of the front line of the common-fields going north or east of the common-fields going south.

According to Rector's plat, the distance from the southeast corner of the common-fields is ¼ of the distance that it is on Brown's plat, from the southeast corner of the common-fields to the river.

On cross-examination, witness testified: I made out this plat from Rector and Brown's field-notes. We went on the ground, and run the southern end of the tract, and the eastern line of Carondelet common-fields. There is a great difficulty in closing the surveys of both Brown's and Rector's. Brown's survey does not close by 12 chains, and the instructions say that only one link shall be allowed. We always go from the monuments, from stone to stone. I have been surveying for four years, and am about 21 years old.

Hamilton Micheau's test.

HAMILTON MICHEAU, a witness for plaintiff, testified:

I am 40 years. I am the son of St. Amand Micheau. I remember when my father lived below the Sugar Loaf, below the shot-factory. I think he moved there in 1825. My father held under Carondelet as

tenant. He died in March, 1845. Mr. Wilcox put him out before that He was there after the sales in 1836 more than two years.

On cross-examination, witness testified: My father built the shot-tower. He did not build any frame house below there. One Wilcox built a frame house south of the factory, and my father went to live in it. He died in it. I can't recollect whether he went there 2 years after the sale of the commons. After he left the stone house he went down to the frame. Wilcox made a purchase of the property, as they say; but I don't know.

Bill of exceptions.—Agreement.

The records introduced in evidence by the defendant in the cases of Dent vs. Bingham, Carondelet vs. Dent, and Gamache vs. Piquinot are agreed between the parties to be used in the supreme court of Missouri, without being copied herein precisely, as the said cases stand in the transcripts, on file in said court; and in the event of this case going to the Supreme Court of the United States on appeal or writ of error, the said records may be incorporated into this record by the insertion of such parts thereof here as the parties, or either of them, may desire, and the clerk of the supreme court will *he* insert them in such event accordingly.

Defendants in sur-rebuttal read the following documents in evidence, and gave the following testimony:

1st. Letter from R. McClelland, of 16th May, 1855, to John Wilson, Commissioner of General Land-Office.

503 *Letter from R. McClelland to John Wilson, Com. of Gen. Land-Office, May 16th, 1855.*

DEPARTMENT OF THE INTERIOR,
May 16th, 1855.

SIR: I herewith return your letter of the 6th ult'o, with its enclosures, and yours of the 27th ult'o, with its accompanying papers, having relation to the case of the Carondelet commons, and accompany the same with arguments and papers illustrative of the views of Mr. H. W. Williams, which have been filed here since the case was again brought to my attention, because of the allegations of Mr. Williams adverse to the position of the substantial identity of Brown and Rector's lines and corners.

I have carefully reviewed the whole subject, and cannot resist the conclusion heretofore arrived at, that Brown's survey is a substantial retracement of Rector's, and is to be taken and regarded as such.

You will be pleased, therefore, to have the surveyor-general resume his operations, which were, under your direction, temporarily suspended during the pendency of this re-examination, and have him carry into effect the decision heretofore made.

Respectfully, your obdt. servant,

R. McCLELLAND,
Secretary.

JOHN WILSON, Esq.,
Commissioner of the General Land-Office.

Bill of exceptions.

2d. Plat was by the defendant offered in evidence of the fractional

section 9, township 44 N., of R. , on a large township map, but excluded by the court; to which defendant excepted.

Wm. Milburn's test.

WILLIAM MILBURNE, a witness for the defendant, testified:

This has been my house since the year 1816. My main business has been surveying, and clerk in the surveyor-general's office. In 1816 I was out surveying—in the winter of 1816 and 1817. In 1817 I was clerk a while, and in winter of 1817 and 1818 I was out surveying. When I was clerk, in 1817, my main duty was to plat military bounty-lands in the office. My main business afterwards, from 1822, was the examination of surveys and making plats. I was appointed chief clerk in 1822. I was absent in the winter of 1822 and '3, and B. Cousin was clerk during that time. I continued as such clerk from 1823 till spring of 1839. General Rector was the first surveyor-general, then Wm. Clark, Wm. McRea, Elias T. Langham, Daniel Dunklin. They were all surveyors-general here, and I, William Milburn, in spring of 1839 succeeded
504 Dunklin, and I continued until June, 1841. I saw the field-notes of Rector's survey as early as 1817. While I was in the office Rector's field-notes were filed away with other field-notes in the office, and no action was taken upon them until Mr. Langham gave instructions to Brown to connect the field-notes of Rector's survey with the public and private surveys. My idea is that Mr. Brown was not instructed to make a survey of the commons, but only to retrace Rector's lines. The practice of the surveyors and the office was rather loose in those days as to signing notes of surveys. I can't say that the field-notes of Rector were kept loosely. They were loosely made as to signing, &c.; that is, like others which were not approved by the surveyor-general, by so writing upon them. The instructions to the deputy surveyors in early times were, that they should keep their field-notes in the following manner: "Survey for A. B. so much land," &c. It was not the practice in 1817 to head the survey with reference to the instructions, until Colonel McRea's time, in the year 1824 or '5.

Question. Was it customary in the time Rector for surveyors when they returned their field-notes to accompany them with the oath of the flagmen, &c.?

Answer. No, sir; there were hundreds of field-notes without any such statement or verification. As fast as the plats were completed they were sent on to Washington. The survey of the Carondelet commons was not completed so as to be in a situation to be sent on to Washington. This was not done until Langham had Mr. Brown connect the field-notes of Rector with the adjoining public and private surveys.

The private surveys for obtaining *for obtaining* patents were delivered to the parties when they were made, and they were sent on to Washington by the parties if they wished. It was not the practice in the office to send separate plats of private surveys; they would send plats as they were laid down on the township-plat. It was the duty of this office to send on the plats to Washington as fast as the township-plats were completed, and they were completed when the surveys in any given township were made. The business of platting, when I came in the office, was not greatly in arrear, because the surveyors made their own plats and the township-plats. This practice of the deputy surveyor's making the township-plats was afterwards abandoned. This change took place in Col. McRea's time, and the platting was done in the office, and other and greater duties required in the field in lieu thereof. The

surveys about Carondelet were incomplete when I became surveyor-general, and therefore could not be sent on. The township-plat of St. Louis, township 45, range 7 east, in 1822, was sent on by August Langham, who had the contract for surveys south, and had not made his return when I came into the office, in 1822. Carondelet surveys are incomplete in this, that the survey of the Carondelet common was
595 not completed, or he had not made his return under the survey. The common-fields of Carondelet were run, as to their out-boundary, at an early day.

Afterwards, when Brown surveyed the commons of Carondelet, he surveyed the out-boundary of the common-fields and the individual lots therein. It is impossible for me to recollect the precise date of these surveys. He surveyed the common-fields at about the same period of time. I don't recollect that there was any difficulty about locating the common-fields of Carondelet. You can't make a survey in the office. If the surveys are already made, you need not go upon the ground to run the out-boundary. I made the out-boundary of St. Louis. The survey was made thus: The lines had been already surveyed, except two: the part of the corporation by the court, in 1809, and the part on the north from Roy's mill, and running west 60 arpens. This whole line had to be surveyed.

Question. Do all surveys close from the field-notes?

Answer. They do not. If a man made his surveys close exactly always, I would consider him a dishonest surveyor. If a man should run one mile square in any place, he could not close mathematically. This arises from imperfection of instruments, from chaining, and other causes; the topography of the land would make some difference, not much.

Question. *Was it* the meaning of this phrase, "You will connect this survey with the commons of St. Louis, whether it interferes with them or not," in the instructions of Langham to Brown?

Answer. It means that if the line of the Carondelet commons coincides with the St. Louis commons, state that; if it goes over, so; and if there be a space between them, state the fact as to the space.

According to Brown's retracing of Rector's survey, there is a space between Brown's survey of the St. Louis and Carondelet commons. This space is laid down as fractional section nine by Mr. Brown.

Plaintiff admits that McPherson is in possession of the land in fractional section 9, and was at the commencement of this suit.

On cross-examination witness testified:

I don't know whether the survey of Rector was made before the 29th of April, 1816, or not. I don't know whether there was any contract with Elias Rector to survey the commons or not after 1816, and do not know whether he made the survey at all.

My impression is that Elias Rector was paid for this survey, but I don't know positively about that. You can find the voucher of that at Washington. I can't say that I have ever seen any instructions or any contract for the survey of the commons of Carondelet by Elias Rec-
506 tor. A deputy surveyor had no right to make a survey without authority—that is, without instructions. No surveys were ever approved that were made without authority. General Rector was very particular about that common; his nephew made some surveys without instructions, and they were rejected. The commons of Carondelet are in township' 43 and 44. If the commons of Carondelet were laid down in 1821, and if there was a survey of the commons of Carondelet platted

in the register's office as of 1821, and as made by Joseph C. Brown under instructions from Sur. Genl. Rector, there ought not to be any other survey existing in the office at that time of the same commons. I observe that there are several subdivisions of sections in the out-boundary lines of the commons of Carondelet. I observe the north boundary line of the commons of Carondelet, as laid down in 1821. The line as laid down here is more than half a mile north of Rector's platted line of the commons. The field-notes of Rector were not regarded in laying down this plat; that is evident from the plat before me. If this plat had existence in the surveyor-general's office, made there, it would be conclusive proof that when this was made Rector's field-notes were not regarded. Plats are sent from surveyor-general's office to the register's office. I do not know if any plats are lost from the surveyor-general's office; the community is interested in knowing how the plats came to be lost, if any are lost. The plats in the register's office came from the surveyor-general's office; they are certified by the surveyor-general to the register. This plat of 1821 has the north line of the commons of Carondelet at the point corresponding with or very near the Sugar Loaf, on the bank of the river Mississippi. Copies of the plats furnished the register at St. Louis were always transmitted to the Commissioner of the General Land-Office, at Washington. I don't recollect of the planting the stone at the Sugar Loaf. I recollect of platting the surveys of these two townships in early times; I can't say how early. I can't say whether I made these two plats as early as 1821. Upon the filing of these plats of 1821 the surveys would have been complete for the purposes designed. My impression is that the land was offered for sale immediately after these plats were filed in the register's office. There can be no doubt that the surveys of these two townships were made under proper instructions and paid for. I have never known of any appeal from the survey represented upon this plat of 1821.

On re-examination witness testified:

I can't recollect when I first saw this platting of the commons of Carondelet. I may have seen this in the surveyor-general's office. My impression is that it will be so found, that there is a plat in the surveyor-general's office of this township, but whether corresponding with
507 Brown's and Rector's survey I don't recollect. I know that these plats of the townships were approved by Mr. Rector, surveyor-general at the time, and that Joseph C. Brown wrote the notes of survey upon them.

Bill of exceptions.

Plaintiff then read all the plats in evidence, from the register's office of the United States at St. Louis, that contain any part of the commons of Carondelet, as follows:

(For which see "copy of plat of United surveys of 1821, as made by Joseph C. Brown, as found in the register's office at St. Louis," page "262 A" of this transcript.—*Clerk.*)

Bill of exceptions.

The defendant objected to the same as irrelevant and incompetent, and excepted to the admission of the same by the court to the jury.

The plaintiff thereupon offered in evidence the following instructions

and reports, to which the defendant objected as irrelevant and incompetent, but the court admitted the same in evidence, and the same were read, as they are ascertained in the second volume of the book entitled "Public Lands," Laws, Instructions, Opinions, &c., Senate edition of 1838, by Gales & Seaton, printers, being numbered in said volume and found upon the pages following: pages 25, 103, 792, 821, 869, 886, 890, 896, 915, 933, 950, 953, 955, 956, 958, 963, 967, 975, 986, 996, 999, and 1021. And the numbers of said instructions and opinions were as follows: Numbers 23, 103, 755, 799, 855, 874, 876, 884, 905, 922, 941, 949, 950, 953, 955, 963, 968, 974, 986, 994, 996, and 1011, being found upon the first-named pages. And it is hereby agreed of record, that the said instructions and opinions may be read in the Supreme Court or any other appellate court, without being copied in this record from the said book last above referred to.

Pl'ff's instruct's given.

The case was here closed upon the evidence, and thereupon the plaintiff asked the following instructions, which were given:

1. All the right, title, and interest of the United States in and to the commons of Carondelet was vested in the inhabitants of Carondelet on the 13th of June, 1812, according to the extent and boundaries of the said commons, as the same existed and had been claimed and used by the said inhabitants in common, prior to and until the 20th day of December, 1803.

Given.—C. B. LORD.

22. If the jury find for the plaintiff, and shall further find that the defendant had knowledge of the plaintiff's claim five years before the
508 commencement of this suit, then the plaintiff is entitled to recover as damages for rents and profits the value of such rents and profits for five years before the commencement of this suit, and from the commencement of this suit up to this date; and the jury shall further find the value of the monthly rents and profits of the premises in question.

Given.—C. B. LORD.

24. If the jury find from the evidence that before, at the time of, and after the survey of Brown for the commons of Carondelet of 1834 the board of trustees of Carondelet claimed the commons of Carondelet on the north of the village to extend to the Sugar Loaf, and that the said *survey* corporate authorities of Carondelet did not accept the said survey of *of* 1834 as the true limit of the commons of Carondelet on the north, but continued from the time of said survey of 1834 to claim as their commons the premises in controversy as a part of their commons until the commencement of this suit, then the plaintiff is not estopped by said survey of 1834 from recovering the premises sued for in this action if the said premises lie within the commons of Carondelet as used by the inhabitants of the village before the 20th day of December, 1803.

Given March 3d, 1858.—C. B. LORD.

Plff.'s instructions refused.

And the plaintiff asked the following other instructions in this case to be given to the jury:

2. If the jury find from the evidence that the land in controversy is within the commons of Carondelet as the same were claimed, used, and

possessed by the inhabitants of the said town or village prior to and until the 20th day of December, 1803, then the title of the United States thereto was vested in the said inhabitants on the 13th day of June, 1812.

3d. If the survey No. 3102 excludes any portion of the commons of Carondelet as the same was claimed, used, and possessed by the inhabitants of the said town or village as common prior to and until the 20th day of December, 1803, it is not conclusive of the extent and boundaries of the land confirmed *by* the said inhabitants by the act of 13th of June, 1812, nor had the board of trustees of said town any authority by assenting to said survey, or accepting the same, to divest the title or bar the right of the said inhabitants to or on that portion of the commons confirmed to them, and not included by said survey on the north.

4th. The board of trustees of the town of Carondelet had no power, by sale or otherwise, to divest the inhabitants of said town of their title in any portion of the commons confirmed to them by the act of the 13th June, 1812, not included within the survey of Lawrence M. Eiler, made in November, 1832, and referred to in the act of the general assembly of Missouri, approved the 13th day of February, 1833, entitled "An act authorizing the corporation of Carondelet to sell and convey certain lots of ground."

509 5th. The board of trustees of Carondelet, prior to the year 1839, had no lawful authority to agree to or accept any survey of the commons of the said town which excluded land confirmed to the said inhabitants as commons by the act of Congress of 13th of June, 1812, so as to divest the said inhabitants of their title in the land so excluded, or bar their right of action therefor.

6th. The certificate of the recorder of land-titles of 22d of August, 1834, purporting to be a confirmation certificate, was issued without authority of law, and is not evidence of the extent and boundaries of the commons confirmed to the inhabitants of Carondelet by the act of the 13th of June, 1812.

7th. The survey No. 3102 by Brown is not and does not purport to be a survey of the commons of Carondelet as confirmed by the act of Congress of 13th of June, 1812. It is made under instructions, confining the said Brown to the field-notes of Elias Rector.

8th. The jury, in determining whether the corporate authorities acquiesced in or consented to said survey of Brown of 1834 as the true survey of their commons, are instructed that they are to consider, from all the facts and circumstances in evidence before them, whether the said corporate authorities of Carondelet, by their acts, officially accepted of and consented to the survey of Brown of 1834 as the true limit of the commons of the town on the north; and if the jury find from the evidence that the corporate authorities of Carondelet by their official acts continued to claim the land north of Brown's survey of 1834 after the making of said survey, and up to the time when said survey was acted upon by the Commissioner of the General Land-Office in 1839, then the said survey of Brown of 1834 does not estop the plaintiff from recovery the land north of the north line thereof in this action.

9th. The jury, in determining whether the corporate authorities acquiesced in or consented to said survey of Brown of 1834 of the commons of Carondelet as the true line of their commons on the north, or as a true survey of their commons, are instructed that they are to consider, from all the facts and circumstances in evidence before them, whether the said corporate authorities of Carondelet, by their acts, officially accepted of and consented to the survey of Brown of 1834 as the

true limit of the commons of the north; and if the jury find from the evidence that the corporate authorities of Carondelet by their official acts continued to claim the land north of Brown's survey of 1834, up to the Sugar-Loaf line, before and after the making of said survey of Brown, and up to the time of the commencement of this suit, then the jury is instructed that the said survey of Brown, and the delivery thereof to the authorities of the corporation of Carondelet, and the use thereof in suits by the said corporation, do not estop the plaintiff from
510 recovering the land north of the north line thereof in this action.

10th. The certificate of Frederick R. Conway, recorder of land-titles, of 22d August, 1839, purporting to a certificate of confirmation of the commons confirmed to the inhabitants of Carondelet by the act of 13th June, 1812, is not evidence of the extent and boundaries of the said common.

11th. The survey No. 3125, purporting to be a plat and survey of the land claimed by the inhabitants of the city of St. Louis as commons, is not conclusive as against the plaintiffs or the inhabitants of Carondelet.

12th. If the survey No. 3102, as made and returned by Joseph C. Brown, was disapproved by the Commissioner of the General Land-Office, and has been changed and modified by order of the Secretary of the Interior since the commencement of this suit so as to exclude therefrom a large tract of land included in the said survey as originally made and returned, then the said survey is not conclusive against the plaintiffs of the extent and boundaries of the commons confirmed to the inhabitants of Carondelet by the act of 13th June, 1812.

13th. If survey No. 3102, as made and returned, was disapproved by the Commissioner of the General Land-Office, or Secretary of the Interior, or both, it was not afterwards obligatory upon the inhabitants of Carondelet as conclusive against them of the extent and boundaries of the *boundaries of the* commons confirmed to them by the act of 13th June, 1812.

14th. The United States not being concluded by survey No. 3102, as made and returned by Joseph C. Brown in 1834, according to its extent and boundaries on the south side of the Riviere des Peres, the inhabitants of Carondelet are not excluded by the said survey as so made and returned, according to the extent and boundaries on the north side of said Riviere des Peres, nor by the said survey as charged or modified by order of the Secretary of the Interior since the commencement of this suit.

15th. The plat of the out-boundary lines of the village of Carondelet, as platted in 1853, purporting to include the out-lots, village lots, common-field lots, and commons, given in evidence, is prima-facie evidence only that the commons of Carondelet, as confirmed by the act of 13th of June, 1812, were within said out-boundary lines; and if the land in controversy is not included within said out-bounda'y lines, then the plaintiff cannot recover unless the jury find from the evidence that said out-boundary lines are incorrect, and that the true and correct out-boundary lines, so run as to include all the commons, village lots, out-lots, and common-field lots, would include the land in controversy.

16th. The deputing of persons by the board of trustees of Carondelet to carry the chain, and attend Brown, the surveyor, in
511 making the survey; the receiving the report of the survey, and of the persons deputed to attend its completion, that it was completed; the causing a copy of the plat of survey to be framed and hung up in the town-hall of Carondelet; the making of the lines of the sur-

vey with stones; the procuring of a certificate of confirmation of the commons, based upon and referring to said survey, and the using of said survey in litigation in suits for land south of Carondelet village, do not constitute an estoppel in law so as to bar the plaintiff from recovering in this suit according to the true line of the commons granted to Carondelet by the act of 1812; and if the jury find that at the time said acts were done the town of Carondelet had a tenant on the commons north of Brown's survey, as claimed by them; that their north line of commons had been run by Brown before or at the time of the survey of the commons in 1834, from the Sugar Loaf to the common-field; and if said Sugar Loaf line was marked on the plats, or appeared on the field-notes of surveys in the surveyor-general's office, and if the town of Carondelet, before and after Brown's survey, claimed as their commons north of Brown's survey to the Sugar Loaf up to the commencement of this suit, then the jury is authorized to find that there was no such consent or acquiescence in Brown's survey of 1834 of the commons as will bar the plaintiff from recovering such lands as was really commons of said town on the 20th Dec., 1803.

17. If the jury find from the evidence that no part of the land on controversy is neither the survey of the town of Carondelet made by Lawrence M. Eiler, deputy surveyor of the county of St. Louis, made in November of the year eighteen hundred and thirty-two, by authority of the board of trustees of said town, the acts and proceedings of the said board of trustees in relation to survey No. 3102 do not estop the plaintiffs from disputing the validity or accuracy of said survey, nor preclude them from maintaining their action for the recovery of any part of land within the commons as used, held, and possessed by the inhabitants of said village prior to 20th Dec'r, 1803, and confirmed by the act of 13th June, 1812.

18th. If it appears to the jury from the evidence that the survey No. 3102 was never assented to by the United States prior to the 23d February, 1855, and that the approval thereof by the Secretary of the Interior excepts from the said survey a large part of the land therein embraced and surveyed as part of the commons of Carondelet in 1834, and which the inhabitants of the said village would have been entitled to if the United States had assented to said survey without said reservation, then the said corporate authorities of Carondelet are not bound by said survey, notwithstanding any assent of the corporate au-
512 thorities of the village previous to said final approval of said survey by the said Secretary of the Interior.

19th. The jury, in determining the question whether the corporate authorities acquiesced in or consented to said survey of Brown of 1834 as the true survey of their commons, are instructed that they are to consider from all the facts and circumstances in evidence before them whether said authorities, by their acts officially declared, accepted and consented to the said survey as the limit of the commons on the north, beyond which they had no further claim, and the burden of showing this fact of acceptance and consent by the official acts of the board of trustees of the town is upon the plaintiff.

20th. If the town of Carondelet had a tenant on the commons north of Brown's survey, as claimed by them before, at the time, and after Brown's survey; and if their north line of commons had been run by Brown before or at the time of the survey of the common in 1834 from the Sugar Loaf mound to the common-fields, and if said line was marked on the plat, or appeared on the field-notes of survey in the surveyor-general's office; and if the town of Carondelet, after Brown's sur-

vey, claimed as their commons north of Brown's survey to the Sugar Loaf, then the jury is instructed that such facts and circumstances are strong evidence that said survey of Brown was not accepted or acquiesced in by Carondelet.

21st. The assent to and acceptance of the survey by Brown of 1834 by the inhabitants of Carondelet, so as to operate as an estoppel, must be an assent to and an acceptance of the survey as the limit of the commons of Carondelet on the north of the town, and the burden of proving the fact of such acceptance of and consent to the survey of Brown as the northern limit of the commons by the corporate authorities of Carondelet is upon the defendant; and if the jury find that the corporate authorities of Carondelet before and at the time of and after the survey of Brown claimed as their commons land north of Brown's survey, and up to the Sugar Loaf, then the mere acceptance of Brown's survey, and the use thereof in suits and otherwise as a survey of commons of Carondelet, does not operate as an estoppel, or bar them from recovering in this action.

23. If the jury find from the evidence that there was an United States survey of the commons of Carondelet made in 1821 and platted in the surveyor-general's office, and a copy thereof filed in the office of the register of the United States, and if there was never any appeal from said survey, and if the same remained of record from 1821 until the year 1834, and still remains of record, then the plaintiff is not estopped by the survey of Brown for the commons of Carondelet of 1834 from recovering the land in question, so far as the said land lies within said United States survey of 1821.

513 Instructions marked No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 23, refused March 2d, 1858.—C. B. Lord.

Bill of exceptions.

And the court refused to give each and every of said instructions from number 2 to 24 inclusive, as last above set forth to the jury, to which decision of the court the plaintiff then and there excepted and objected.

And the defendant asked the court to give the following instructions to the jury, which the court gave, as follows:

Deft.'s instr'ns.

1. If the jury believe, from the evidence, that the survey made in 1834, by Joseph C. Brown, of the commons of Carondelet, was within the same year returned to the office of the surveyor-general of public lands of Illinois and Missouri, and was in that year approved by such surveyor-general, and that that survey is now the approved survey of said commons as recognised by the Land Department of the United States, and if the jury further find, that the board of trustees of said town of Carondelet were notified by said Brown before said survey was made that he had received his instructions, and would commence the work at a time named; that said board of trustees appointed a committee to superintend the survey; that afterwards said committee reported to said board of trustees, "that Joseph C. Brown had completed the survey of the commons, and that the duties assigned them *was* duly performed; that said trustees ordered the persons employed in said survey to be paid, and appointed Joseph Chattillion to set up a stone every half-mile on the line of said commons, where

necessary, in order to designate the line properly; and if the jury further find, that afterwards, and within the year 1834, the board of trustees of said town of Carondelet obtained a plat of said survey of the commons, and a confirmation certificate, issued by the recorder of land-titles and based upon said survey, and ordered said survey and confirmation certificate to be filed in their office, and directed the register to have the survey framed for the use of the town; and if the jury further find, that afterwards, in the year 1839, and subsequently thereto, the board of said town of Carondelet caused the land included within said survey to be subdivided into lots or tracts, conforming in such subdivisions to the exterior lines of said survey as the boundary of the commons, and did proceed to dispose of said lands according to such subdivisions by leases for 99 years, renewable; and if the jury further find, that the corporation of said town of Carondelet, in different suits at law, in which the title to the commons of said town came in question, did exhibit and give
514 in evidence the said survey as the regular and approved survey of the commons of the said town; and if the jury further find, that the said corporation of Carondelet, for fifteen years after the said survey was approved and recorded, made no application to the Land Department of the United States to have said survey set aside or changed, then these facts are in law an acceptance of such survey by the corporation of Carondelet, and such acceptance estops the plaintiff from claiming as a part of the commons of said town any land lying outside of said survey.

10. But if the jury believe, from the evidence, the facts set forth in instructions number 1, given for def't to the jury, then no claim of commons by the corporate authorities of Carondelet outside of the survey by Brown of 1834 should be regarded by the jury, unless made and insisted upon in the land-departments of the United States, and as a claim upon or against the United States, for commons outside of said survey.

Given March 3d, 1858.—C. B. LORD.

Bill of exceptions.

To the giving of which last two instructions the plaintiff then and there objected and excepted.

Mo. for new trial.

And the foregoing were all the proceedings and evidence on the trial of this cause. And the jury having returned a verdict for the defendant, the said plaintiff filed by attorney its motion for a new trial, as follows:

In the St. Louis land court of October term, 1857.

THE CITY OF CARONDELET, PLFF.,
vs.
THE CITY OF ST. LOUIS, DEFT.

The plaintiff comes and moves this court for a new trial in this cause, for the following reasons:

1st. Because the verdict is against evidence and the weight of evidence.

2d. Because the verdict is against law.

3d. Because the court erred in admitting incompetent and illegal evidence to the jury for the defendant.

4th. Because the court erred in refusing to admit competent and legal evidence to the jury on the part of the plaintiff.

5th. Because the court erred in giving to the jury the instructions asked and given for the defendant.

6th. Because the court erred in refusing to give to the jury the instructions asked by the plaintiff.

HENRY S. GEYER,
Atty. for the Plaintiff.

Bill of exceptions.

515 The court overruled said motion, and the plaintiff then and there excepted, and prayed that the same and all the foregoing proceedings, evidence, documents, and rulings be made a part of the record in this cause; which is done accordingly, as witness my hand and seal as judge of said court in the term of March, 1858. This bill of exceptions is signed at March term, 1858, pursuant to two stipulations filed at the last term, as follows:

1st stipul't'n to file and sign bill of exceptions.

In the St. Louis land court.

CITY OF CARONDELET
vs.
CITY OF ST. LOUIS.

It is agreed between the parties in this suit that the bill of exceptions may be signed at any time within twenty days in this suit, and that the bill may be filed by agreement, nunc pro tunc, as of the 5th day of March, 1858, and with the same effect as if filed on that day in fact, and that no objection will be made thereto, and that each party will waive all error in regard to the filing of said bill of exceptions.

BRITTON A. HILL,
Atty. for Plff.
A. TODD, *Att'y. for Deft.*

ST. LOUIS, *March 2d*, 1858.

2d stipul't'n to same.

In the St. Louis land court, October term, 1858.

CITY OF CARONDELET
vs.
CITY OF ST. LOUIS.

The parties, by their attorneys, consent that the bill of exceptions in the above cause may be signed at the March term, 1858, with like effect as if signed at this term, and all errors are waived therein as to said signing and filing.

A. TODD, *Atty. for Deft.*
BRITTON A. HILL,
Att'y. for Plff.

ST. LOUIS, *5th March*, 1858.

Bill of exceptions.

Which said stipulations were made a part of the record in this cause at the last term of this court, and the argument of the motion for a new trial was continued to this term and decided on this same day.

Witness my hand and seal.

C. B. LORD, [SEAL.]
Judge of the St. Louis Land Court.

516 *Af'd'v't for ap'l.—Ap'l to S. court granted and bond filed.*

And afterwards the following further proceedings were had in this cause, to wit:

FRIDAY, *June 25th*, 1858.

THE CITY OF CARONDELET } Appeal to the supreme court.
vs.
THE CITY OF ST. LOUIS. }

Now, at this day, comes said *said* plaintiff, by its attorney, and files herein an affidavit for appeal, and on its motion an appeal is granted it from the decision herein rendered to the supreme court; and thereupon they file herein a bond, as required by the court, in the sum of three hundred dollars, with Anthony H. Menkens as principal and Robert N. Martin and John Maguire as sureties, which is approved by the court.

Which affidavit for appeal is in the words and figures following, to wit:

Aff'd'v't for appeal.

In the St. Louis land court, March term, 1858.

THE CITY OF CARONDELET }
vs.
THE CITY OF ST. LOUIS. }

Anthony H. Menkens, agent for the plaintiff, comes and moves the court to grant them an appeal from the judgment rendered in this case, and on his oath says that such appeal is not made for vexation or delay, but because the affiant believes that the plaintiff is aggrieved by the judgment of the court.

A. H. MENKENS,
Agent for Carondelet.

Subscribed and sworn to before me this 25th day of June, A. D. 1858.

C. A. MANTZ, *Clerk*,
By E. P. WALSH, *D. C.*

Bond.

The bond filed *filed* as aforesaid in this cause is in the words and figures following, to wit:

Know all men by these presents that we, Anthony H. Menkens, as principal, and Robert A. Martin and John Maguire, as sureties, are held and firmly bound unto the city of St. Louis in the sum of three hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at St. Louis this twenty-fifth day of June, A. D. 1858.

The condition of the above obligation is such that whereas the city

of Carondelet has appealed from the judgment rendered against
517 her, and in favor of the city of St. Louis, in the St. Louis land court, for the costs of the suit:

Now, if the said appellant will pay all costs and damages that may be awarded against her, occasioned by such appeal, and shall prosecute her appeal, and shall perform such judgment as shall be given by the supreme court, and such as the supreme court may direct the St. Louis land court to give, and shall, if the judgment, or any part thereof, be affirmed, comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against her by the supreme court, then this obligation shall be void; otherwise it shall remain in full force and effect.

A. H. MENKENS. [SEAL.]
ROBERT A. MARTIN. [SEAL.]
JNO. MAGUIRE. [SEAL.]

Approved by the court, June 25th, 1858.

C. A. MANTZ, *Clerk*,
By E. P. WALSH, *D. C.*

Stipulation filed.

And afterwards the following further proceedings were had in this cause, to wit:

TUESDAY, *June 29th*, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

The following stipulation filed in this cause:

Stipulation as to De Ward's survey.

It is stipulated and agreed by and between the parties to this suit that the map of De Ward, purporting to be of the St. Louis commons, referred to in the bill of exceptions in this case, may be used in the supreme court of Missouri, and in the Supreme Court of the United States, without being copied into the bill of exceptions, and that this agreement may be made a part of the record, as of the day of filing the bill of exceptions in this cause.

A. TODD, *Atty. for Deft.*
BRITTON A. HILL,
Atty. for Plff.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Charles A. Mantz, clerk of the St. Louis land court within and for said county, certify the foregoing transcript to be a true and
518 correct copy of the record and proceedings had in the case of The City of Carondelet, plaintiff, and The City of St. Louis, defendant, as fully as the same remains of record in my office.

In testimony I hereto set my hand and affix the seal of our said Saint Louis land court, at office, in the city of St. Louis, this third day of July, A. D. 1858.

[SEAL.] CHARLES A. MANTZ, *Clerk.*

Assignment of errors.

Afterwards, in said supreme court, at the October term, 1858, on the

8th day of November, 1858, the appellant appeared by attorney and filed an assignment of errors herein as follows, to wit:

The appellant comes and assigns as errors in this cause the following: That the court below erred—

1st. In admitting to the jury, on the part of defendant, incompetent and illegal evidence.

(Objected to by plaintiff.)

2d. In excluding from the jury competent and legal evidence of plaintiff's duty offered.

3d. That the court erred below further, in giving to the jury the instructions asked and given for the defendant by the court, and in refusing to give to the jury the instructions asked by the plaintiffs. And the court below further erred in giving judgment for the defendant, when the judgment should have been given for the plaintiff.

Therefore the plaintiff prays that the judgment may be reversed.

B. A. HILL, *For Plff.*

Joinder in error.

To which a joinder in error was then and there filed, as follows:

Now the defendant comes and says that there is no error such as above assigned, and that there are no errors in said record and judgment, and prays for its affirmance.

A. TODD, *Atty. for Deft.*

Continuance.

Afterwards this cause was continued until the next term of this court

Argument of cause commenced.

Afterwards at the March term, 1859, the following further proceedings were had herein:

THURSDAY, *April the* 14*th.*

Now come again the parties herein, by their attorneys, and begin their arguments in this cause; but, not concluding, it is laid over until to-morrow.

519 FRIDAY, *April the* 15*th.*—Now come again the parties herein, by their attorneys, and further proceed with their arguments in this cause; but, not concluding, it is laid over till to-morrow.

SATURDAY, *April the* 16*th.*—Now, at this day, come again the parties herein, by their attorneys, and further proceed with their arguments in this cause; but, not concluding, it is laid over until *to* Monday.

Argued and submitted for decision.

MONDAY, *April the* 18*th.*—Now, at this day, come again the parties herein, by their attorneys, and conclude their arguments in this cause, and submit the cause to the court for decision.

Judgment of sup. court.

Afterwards, on the 24th day of May, during the term aforesaid, the following further proceedings were had herein, to wit:

THE CITY OF CARONDELET, APPELLANT,
vs.
THE CITY OF ST. LOUIS, RESPONDENT.
} Appeal from St. Louis land court.

Now, at this day, come again the parties herein, by their attorneys,

and the court here, being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by said land court rendered, be in all things affirmed, and stand in full force and effect.

And it is further considered and adjudged by the court that said respondent recover against said appellant its costs and charges herein expended, and have therefore execution.

Opinion of sup. court.

And on rendering said judgment the court gave a written opinion in said cause, which is in words and figures as follows:

THE CITY OF CARONDELET *vs.* THE CITY OF ST. LOUIS } Appeal from St. Louis land court.

The question upon which this case turned in the land court we consider as virtually settled by the previous decisions of this court, and fully supported by distinct enunciations of the same principle and a similar application of it by the Supreme Court of the United States.

In the case of Carondelet vs. McPherson, this court declared "that a survey regularly made and approved is conclusive upon the Government; that the land within the boundaries is the land granted, and the acceptance of the survey by the grantee is conclusive that all the land granted is within the boundaries." (20 Mo. R., 204.)

520 In the case now under consideration, (City of Carondelet vs. City of St. Louis, 25 M. R., p. 464,) this court said:

"If the survey of 1834 was approved, it would be prima facie evidence of the true location and boundaries of the Carondelet common, and the plaintiff could not recover without showing that it was incorrect and had never been recognised or accepted. No formal act is necessary to constitute an acceptance; but it may be inferred from a variety of acts and circumstances; and though the acts of the party going to show that the survey had been accepted must be proven as facts to the jury, it will be the province of the court to declare, as a matter of law, the legal effect of particular acts bearing on the question."

In Menard vs. Massey, 8 How., 314, it is declared that "when the survey is made and the field-notes returned to the surveyor-general's office, and the description and plat made out in form, and approved by the surveyor-general, it is conclusive evidence as against the United States that the land granted by the confirmation is the same described and bounded by the survey, unless an appeal is taken by either party or an opposing claimant to the Commissioner of the General Land-Office. This consideration depends on the fact that the claimant and the United States were parties to the selection of the land, for as they agreed to the survey, they are mutually bound and respectively estopped by it."

In Guitard vs. Stoddard, (16 How., 512,) Mr. Justice Campbell, in speaking of the importance of a survey and in reference to a confirmation of a common-field lot under the act of 1812, reiterates with approbation this language of Mr. Justice Catron in Menard vs. Massey.

The position of this court in the case of the City of Carondelet vs. the City of St. Louis, (25 Mo. R.,) in relation to the mode of establishing on the trial the fact of acceptance of a survey, is not understood to conflict with the views expressed in the case of Carondelet vs. McPher-

son. In the last-named case the facts upon which the question of acceptance depended had not been passed upon by the jury, either with or without instructions from the court which tried the case, and this court could not, as a matter of law, assume the existence of any number of facts, or any one fact, which, when established by a verdict, might, in their estimation, constitute an acceptance. Whether there was an acceptance or not, was regarded as a fact to be established to the satisfaction of the jury, and so it was considered in the case of the City of Carondelet vs. the City of St. Louis; but it was further added in this last case, what we suppose to be entirely consistent with the views expressed in the former one, that an explanation of the facts which legally constitute a binding acceptance is properly within the province of the court; and such was the view of a question anal-
521 ogous to this, in the case of Minor vs. Edwards and Price, (12 Mo. R., 137.)

However this may be, we are clearly of opinion that it is for the court to say what acts will in law constitute an estoppel; and aside from any mere verbal criticism upon the instructions of the land court, and the order in which they are now found upon the record, they submit to the jury, substantially and seriatim, all the facts enumerated by the court in Carondelet vs. McPherson, and almost in the language of that opinion, and declare that these facts, if they existed, constituted an acceptance of the survey.

Assuming, however, that these decisions are not binding upon us, or that they will admit of a different interpretation, and considering the question as an open one, our opinion in relation to the merits of this case is not changed. We are unable to perceive anything startling or novel, much less the slightest appearance of injustice or harshness in the application of this familiar doctrine of the common law concerning estoppel to the public surveys; on the contrary, its mere enunciation must commend itself to the sense of justice and propriety entertained by all persons, independent of legal enactments or judicial decisions.

A claimant of a specific tract of land, for the title to which he depends entirely upon the Government, applies to that Government for a confirmation. The application is heard and granted, and at his instance the Government, through its authorized agent, points out by a survey the exact tract which has been thus confirmed or granted. The claimant accepts the land thus designated; takes possession, and disposes of it. Shall he be allowed, after this, to turn round and say, his land thus granted and surveyed, accepted, and disposed of, was not at the place where the Government had located it, but at another and different place?

Is there any principle of justice or natural reason which would tolerate such a course? On the contrary, is it not in conformity to common sense as well as common right, that the party who has thus declared, by the most deliberate and solemn action of which the subject-matter admitted, that his confirmation was at the place where the Government had located it, should not be allowed afterwards to deny it, however false may have been the original assertion? The common-law doctrine of estoppel is not a technical one, nor is it an inflexible iron rule, confining itself to a given state of facts, but a principle of justice and public policy, adapting itself to varying circumstances. It is merely an admission, made in a form so deliberate and so solemn, either by record, by deed, or by act, as that public policy will not permit it to be contradicted. We see no impropriety in applying it to the peculiar condition of things which has sprung up here in reference to Spanish grants and

U. S. confirmations and surveys. That it is just and equitable, no one will deny; that it is in conformity to the spirit of the laws of the
522 U. S. upon this subject, interpreted as they have been by the highest tribunal authorized to pass upon these laws, is manifested by what has already fallen from that court, and it is only upon the most technical grounds that the doctrine is objected to.

That the estoppel must be mutual, in order to be binding, is plain. If the Government is not bound, neither is the claimant. But the view entertained of Brown's survey of 1834, in the case of Sigerson v. Dent, is that the Government was bound by it, and if the Government was bound by it, Carondelet was equally bound by it if she accepted the land so surveyed as her common.

If the exclusion of the 1,720 acres of land from Brown's surveys for a military reservation had been made without the consent of Carondelet, and was a valid exclusion, within the power of the Government at the time it was done, we should, of course, concur in the views urged by the counsel for Carondelet in this case. In that event, the Government of the U. S. not being bound by the survey, neither were the inhabitants of Carondelet, however much they may have insisted upon its validity, and whatever action they may have taken in reference to it. But we have in the record two ordinances of the city of Carondelet, and a deed of conveyance, giving undoubted proof of the consent of Carondelet to this reservation.

The existence of valid claims within the limits of the survey of Brown would of course form no objection to the estoppel either or one side or the other. The survey was not binding on third persons. Neither the Government nor Carondelet could affect the title of adverse l aimants by any agreement of theirs to a survey.

It has been argued, in this case, that as the corporate authorities of Carondelet had not any power in 1834, or previous to 1851, to sel this land in fee-simple, they could not, therefore, at the date of this survey, by any consent or acts of formal acceptance, part with their title to any portion of their common, outside of Brown's survey, confirmed by the act of 1812, upon user alone.

The titles which have sprung up here, based upon inchoate claims originating under another government, and especially those concerning the commons, attached by law and usage to certain ancient villages, have occasioned much legislation on the part of the Federal Government, and on the part of the State, and many decisions upon those aws by the courts of both, which in truth constitute mainly the law by which these titles are to be construed and governed. The common law and the law of Spain, and the civil law, which was its basis, may guide or illustrate, but cannot control. After all, we must follow that interpretation of the statutes relating to this subject which a long series of authoritative judicial decisions may require. The whole system s sui generis, and the security and stability of titles requires that it
523 should be so maintained, and general principles, abstractly correct, ought not, and cannot safely be taken either from the Spanish or common law to affect the stability of titles deriving their efficacy from the laws of the U. States and of this State, and judicial interpretation of those laws, and which have been passed from hand to hand upon the faith of these decisions and laws.

We do not mean by these remarks to admit that the conclusion arrived at in this case is inconsistent with any principle of either the common law or the law of Spain, under which this property in commons originated. All we mean to say is, that the titles growing out of this

peculiar property, now based upon laws of the U. States and of this State, and upon judicial interpretations of those laws, must be governed mainly by reference to these laws and decisions.

The question on the trial of this case was not whether in 1834, the date of Brown's survey, Carondelet had any power to dispose of her commons in fee-simple, but whether either then, or at any time anterior to the trial, her acts in relation to this property amounted to an acceptance of the survey, and an appropriation of the land within its limits as her common, conceding that the corporate authorities of Carondelet possessed no power of making a fee-simple title to these lands in 1834, and that her leases in 1838 for 99 years, renewable at the pleasure of the lessee, are distinguishable from any absolute disposition of the common, although the difference for all practical purposes may be quite unappreciable; yet in 1851 her charter gave her an absolute control over this property, and a power to convert these leases into fee-simple titles. In 1824 the power to lease was given, and in 1839 the leases previously made were sanctioned by an express enactment of the legislature of Missouri. (Sess. Acts, p. 148.) Whether Carondelet possessed the power, therefore, in 1834 to part with any of her title to her common or not, she certainly had that power long before this suit was brought, and had by her application to the legislature in 1838, and her application to Congress in 1848, expressly sanctioned her previous disposition of these lands in 1838 [1848.] (See petition to Congress, p. 81, P. R.) So that at the time of the trial, when her power could not be questioned, she occupied the same position in relation to her assent and satisfaction of Brown's survey as she had done previously when her power to give such an assent might have been questioned.

The history of this controversy, as exhibited in this record, shows that the authorities of Carondelet always acquiesced in the survey of their commons, so long as the Government of the United States showed a disposition to respect it. Previous to the survey, it is true, some of the authorities of Carondelet, and probably some of the inhabitants who had no authority, remonstrated most earnestly, and perhaps justly,
524 against Brown's survey of the St. Louis common, which, as they alleged, encroached upon their common on the north. But when Brown's survey of their common was made, embracing as it did several thousand acres more than their original claim in quantity called for, no further complaint was made, at least to the Government, and it was not until the officers of the Government commenced efforts to overturn this survey that Carondelet sent up her remonstrances to Washington. The controversy was then kept up; but as the Government finally acquiesced in the survey, and the original approval of the surveyor-generdl was allowed to stand, the same rule should apply to Carondelet, and both parties be held equally bound.

It is hardly necessary to add, what has already been distinctly declared by this court in the case of Carondelet vs. McPherson, that a survey of a confirmation is a survey of the whole confirmation, and that it must be received by the claimant as it is offered by the Government, as an entirety. The survey purports to embrace all the land within the claim, and if accepted at all, it must be taken in the sense in which it is granted. Carondelet cannot accept a survey of 9,000 acres as a satisfaction of her claim, under the act of 1812, for common, and at the same time be allowed to assert that there remains land outside of the survey within the confirmation. Such is not the purport or intendment of the law; and as the Government never makes, and is indeed not authorized to make any such partial surveys, so the party that takes them

must receive them in the sense in which they are given. Upon any other construction, a survey could not be held binding on the Government.

Judge Richardson concurs.

Judgment affirmed.

W. B. NAPTON.

Bond on writ of error to U. S. Sup. Court.

And afterwards, and during said term, and on the 2d day of June, in the year 1859, the plaintiff filed in this cause a bond, which is in words and figures as follows:

Know all men by these presents that we, Anthony H. Menkens, as principal, and Didrick B. Menkins and Campbell G. Link, as securities, are held and firmly bound unto the city of St. Louis, in the full and just sum of three thousand dollars, to be paid to the said city of St. Louis, her heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents sealed with our seals and dated this second day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas lately at the March term, 1859, of the supreme court of the State of Missouri, in a suit depending in said court between The
525 City of Carondelet and The City of St. Louis, judgment was rendered against the said City of Carondelet, and the said City of Carondelet having obtained a writ of error to the said court to reverse the judgment in the aforesaid writ, and a citation directed to the mayor of the said city of Saint Louis citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such that if the said City of Carondelet shall prosecute said writ to effect, and answer to the defendant in error all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue. "To the defendant in error" interlined before execution.

A. H. MENKENS. [SEAL.]
D. B. MENKENS. [SEAL.]
C. G. LINK. [SEAL.]

Approved by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 2d day of June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss:*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, held at St. Louis, certify the foregoing to be a full, true, and complete transcript of the record and proceedings of said supreme court, in the cause of Mhe City of Carondelet, plaintiff, against The City of St. Louis, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said court, at office, in the city of St. Louis, this first day of October, in the year one thousand eight hundred and fifty-nine.

[SEAL.] WM. S. GLANVILLE, *Clerk.*

(For township plat see original, page 258.)

The United States of America to the mayor of the city of Saint Louis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The City of Carondelet is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against
526 the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Scott, presiding justice of the supreme court of the State of Missouri, this second day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

I hereby certify that I served the within citation on Oliver D. Filley, mayor of the city of St. Louis, at St. Louis, Mo., on the 2d day of June 1859, by delivering a true copy of the same to him personally.

THOMAS S. BRYANT,
U. S. Marshal Eastern District of Missouri,
By J. H. DOUGLASS, *Dep'ty.*

Marshal's fee, serving citation, $2.00.

Writ of error.

[L. S.] UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, at March term, A. D. 1859, between the City of Carondelet, plaintiff, and the City of Saint Louis, defendant, a manifest error hath happened, to the great damage of the said City of Carondelet, as by her complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should to be done.

Witness the honorable Roger B. Taney, Chief-Justice of the said Supreme Court, this second day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S., Missouri District.

527 Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 2d day of June, 1859.

WILLIAM SCOTT.

STATE OF MISSOURI,
County of St. Louis, ss:

Britton A. Hill, attorney for the plaintiff in error in the within-named cause, being duly sworn, says that on the second day of June, 1859, he lodged in the office of the clerk of the supreme court of the State of Missouri, at St. Louis, a copy of the within writ of error, endorsed "The City of Carondelet vs. the City of St. Louis"—copy of a writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the above-named city of St. Louis, June 2d, 1859—Britton A. Hill, atty. for the plff. in error. And further deponeth saith not.

BRITTON A. HILL.

Sworn to and subscribed before me this 3d day of June, 1859.

WM. S. GLANVILLE,
Clk. Supreme Court, St. Louis.

THE STATE OF MISSOURI, *ss:*

I, William S. Glanville, clerk of the supreme court within and for the State of Missouri, held at St. Louis, in obedience to the within writ, herewith send to the Supreme Court of the United States a full, true, and complete transcript of the record and proceedings in the case of the City of Carondelet, plaintiff, and the City of St. Louis, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said court, at office, in St. Louis, this first day of October, in the year one thousand eight hundred and fifty-nine.

[SEAL.] WM. S. GLANVILLE, *Clerk.*

Filed 29th November, 1859.

528 Defendants then read in evidence deed from William McPherson and wife to the city of Carondelet, conveying 4½ acres of frac. sec. 9, dated 11 February, 1860, as follows:

Deed.—McPherson & wife to city of Carondelet.

This deed, made and entered into this eleventh day of February, eighteen hundred and sixty, by and between William M. McPherson and Mary A., his wife, parties of the first part, and the city of Carondelet and Anthony H. Mankins, parties of the second part, witnesseth, that the said parties of the first part, in consideration of a compromise this day made, and of the sum of one dollar to them paid by said parties of the second part, the receipt of which is hereby acknowledged, do by these presents bargain, sell, convey, and forever quitclaim unto the said city of Carondelet and the said Anthony H. Mankins, as tenants in common, the following-described tract of land, situate in the county of St. Louis, and in fractional section nine, township forty-four north, range seven east, bounded and described as follows:

Beginning at a stake or stone on the west side of the Carondelet road, thence north along the Carondelet road four chains and fifty links to a stake or stone; thence westwardly, along the fence of said party of the first part, thirteen chains and five links to a stake or stone corner;

thence southwardly, along the line of the tract conveyed, three chains forty-eight and a half links to the southwest corner of this tract; thence eastwardly, along a private street sixty feet wide, eleven chains and thirty-one links to the beginning, on the Carondelet road, bounded
529 east by the Carondelet road, north by the fence which separates it from land claimed by the heirs of McNulty, west by land of said parties of the first part, and south by said private street sixty feet wide, containing in the tract hereby conveyed four and one-half acres, said private street being for the use of the property of the parties to this deed, and *to* subject to their control and disposal if they shall at any time mutually agree to abolish or change said street: to have and to hold the same, with all the rights and privileges thereto belonging, unto the said parties of the second part, and to their assigns, forever.

And the said Anthony H. Menkins and Bernard Poepping, mayor of the city of Carondelet, join in this deed as evidence that the tract of four and a half acres of land herein conveyed is the land selected by them under the provisions of ordinance No. 314 of the city of Carondelet, authorizing a compromise with said Wm. M. McPherson.

In witness whereof said parties of the first part and the said Menkins and Poepping have hereunto set their hands and seals this day and date first above mentioned.

WM. M. McPHERSON. [SEAL.]
MARY A. McPHERSON. [SEAL.]
A. H. MANKINS. [SEAL.]
BERNARD POEPPING, [SEAL.]
Mayor of the City of Carondelet.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the thirteenth day of February
530 eighteen hundred and sixty, before the undersigned, a notary public in and for the county aforesaid, came William M. McPherson and Mary A., his wife, Anthony H. Menkins, and Bernard Poepping, mayor of the city of Carondelet, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as the parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. And the said Mary A. McPherson, having first been by me made acquainted with the contents of the foregoing conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

[SEAL.] EPHRAIM G. OBEAR,
Notary Public St. Louis County.

Filed and recorded February 13th, 1860.

C. KEENLE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of a deed executed by Wm. M. McPherson and wife, together

with acknowledgment, date of filing, and recording thereof, as the same remain on record in my office in book 232, page 494.

Witness my hand and official seal, at office, this 24th day of May. 1871.

531 [SEAL.] W. C. KENNETT, *Recorder.*

[5-cent U. S. rev. stamp cancelled.]

Testimony of Mrs. Levant.

Mrs. LEVANT, next being called by the defendants, testified as follows:

Am 71 years of age; am the wife of Thomas W. Levant; knew Thomas Chartrand, sr.; knew him from a child to man; he was a married man; knew he lived near Stringtown road, near Carondelet, nearly 40 years ago; had a little log cabin not far from Stringtown road; there was a kind of garden near the house; couldn't tell how many years Chartrand lived there; I attended on Mrs Chartrand in confinement on that place in that cabin; Felix and Paschal, twins, were born there; Felix and Paschal are now 40 years old; don't know exactly how old they are; I attended her at another birth, can't be certain whether in Carondelet; people who lived out there same as they lived in the town of Carondelet; it is in my mind that I attended her another time in the cabin; Mrs. Laffler lived in that cabin, I believe, by Mr. Chartrand's permission; Mr. Laffler went there under Mr. Chartrand; don't know whether he paid the rent to Chartrand; don't remember anything particular growing there—never paid any attention; appears to me there was a little tree back of the house; I acted in the capacity of
532 midwife, and my attention was directed to the lady; knew Thomas Chartrand, jr.; don't remember whether he lived there or in the country, and can't tell myself who lived there.

Cross-examination:

Don't now recollect of delivering any but living at Chartrand's place; couldn't say for certain; but it is in my mind that I delivered another child in that cabin; couldn't tell for certain.

Testimony of John Epes Cowan.

The defendant, JOHN EPES COWAN, next testified in his own behalf, as follows:

Am 58 years old; lived in Missouri 40 or 41 years; knew Chartrand, sr., in 1830, and afterwards until his death, but did not see him after 2nd or 3rd year of my acquaintance with him; knew nothing of Chartrand, sr., in possession of frac. sec. 9; saw the place when Thomas Chartrand, jr., occupied it. I know where frac. sect. 9 is; saw improvements on it; had a survey made there by Cozens, county surveyor; the heirs made a deed to me of ½ of the property; paid out, I suppose, $3,000.00; have never paid Blair anything.

Cross-examination:

All I referred to in possession of Thomas Chartrand, jr., is of the 4 arpents; don't remember whether the fence extended out to Chartrand's; I presume it included the 4 arpents; the fence was up to McPherson's fence or corner—did not run straight—was vacant land on the north and east; the Chartrands had actual possession of the land Mc-
533 Incorrect. Pherson enclosed; had survey made by Cozens, and was present; it was made in early part of winter, 1849; Thomas

Chartrand, jr., represented himself as administrator of his father's estate; he, with one of the other heirs, was in possession as administrator as aforesaid. Incorrect.

Defendants then read in evidence a deed from William M. McPherson & wife to Delor, dated June, 1860.

Deed from McPherson & wife to Delor.

(See page 105 of this transcript.—*Clerk.*)

534 Defendants rest.

PLAINTIFF IN REBUTTAL.

Testimony of John F. Long.

Plaintiff then introduced, in rebuttal, JOHN F. LONG, who testified as follows:

I knew Richard B. Dallam; knew when he was land-officer of the United States in St. Louis; was land-officer in 1849 & '50; he was receiver of public moneys; think he was not before that time; knew him since 1839; think he was not receiver before that time.

Cross-examination:

Don't remember he was register before that time; think he was city auditor or comptroller; remember he was under Gen. Pratte, and may have been register.

Plaintiff next read in evidence, by consent, the statement or affidavit of P. Lee Hall, in rebuttal, which statement is here marked "Exhibit N," and is as follows:

Affidavit of P. Lee Hall.

P. LEE HALL, being duly sworn, on his oath says that he knew Richard B. Dallam in his life-time, now deceased; he died about thirteen years ago. I am a son-in-law of his. I knew him as early as the year 1840. He was city auditor up to the time of his appointment of receiver of public moneys of the United States. Richard B. Dallam was appointed as receiver of public moneys at land-office in St. Louis by President Taylor, in 1849. This was the first time he had ever
535 held office under the United States. He was market-master of the Centre market when I first came here to St. Louis; from this he went into city auditor's office. He served two or three terms in the last-named office. I think he became auditor in two years after I came here.

P. LEE HALL.

Sworn and subscribed to before me this 30th May, 1871.

JOHN LEWIS, *Clerk.*

Plaintiff here closed.

The foregoing was all the testimony, evidence, and proceedings on the trial and hearing of this case, and these defendants insisted that the petition should be dismissed for want of equity and for want of jurisdiction, and for other reasons; but the court refused so to do, and

entered the following decree for the plaintiff. (See page 28 of this transcript.)

And defendants, within four days thereafter, filed their motion for review and rehearing, as follows:

Defendants' motion for a rehearing & new trial.

And now come the defendants, Coleman Niles Hogan and the Chartrands, by their attorneys, and move the court to set aside the decree, & for a rehearing and a new trial in this cause, for the following reasons, to wit:

1st. Because the court erred in excluding proper and legal testimony & evidence offered on the part of the defendants.

2nd. Because the court admitted illegal and improper testi-
536 mony on the part of the plaintiff.

3rd. Because the judgment and decisio of the court is against law and equity, and against evidence and the weight of evidence.

4th. Because the decision and judgment of the court should have been for the defendants, and not for the plaintiff.

5th. Because, upon the evidence, testimony, and equities of the case, the plaintiff's petition should have been dismissed.

6th. Because the evidence and testimony in this case fully and conclusively sustain all and every the denials, averments, and allegations contained in the answer of these defendants, and fully controverted and disproved each and every averment and allegation contained in plaintiff's petition, and the decree and judgment should have been that plaintiff s petition be dismissed.

7th. Because it is error for the court to hold or exercise any power or authority or jurisdiction to vacate the patent granted by the United States to the heirs of Thomas Chartrand, deceased, on a pre-emption fully proved and established.

8th. Because it is error in the court to hold that the State location and patent in favor of Wm. M. McPherson was valid, when in fact and in law it was a nullity as against the pre-emption of Thomas Chartrand, dec'd, and as against the U. S., who held the legal title to this land under the issue of the patent of 1866.

9th. Because it is error for the court to hold that the title of McPherson, by force of the State location and patent under the acts of Congress & the statutes of Missouri, was a better title than that vested in the heirs of Thomas Chartrand, dec'd, by virtue of the
537 pre-emption under acts of Congress, and the decision of the register and receiver, and the Commissioner of the General Land-Office, and of the Secretary of the Interior, under acts of Congress which vested the title of the U. S. in the heirs of Thomas Chartrand, deceased. And the court further erred in deciding against the validity of said acts of Congress, and against the validity of the decisions of said officers of the U. S. against the validity of said patent to said heirs of Thomas Chartrand, dec'd.

10th. Because the court further erred in deciding against the validity of the patent of the U. S. to the heirs of Thomas Chartrand, dec'd, and in passing upon the power of the U. S. to vest the title without the U. S. being a party, in doing which this court had no jurisdiction.

11th. Because the court erred in holding that the burden of proof was on the heirs of Thomas Chartrand, deceased, to establish before the court the right to the patent of the U. S., when in fact and in law he burden of proof was upon the plaintiff to show that said heirs ob-

tained said patent by fraud, imposition, and improper evidence before the several land departments of the U. S.

12th. Because the court erred in holding that there was any equity in the plaintiff's bill, when in truth and in law his remedy was at law, and not in equity.

B. A. HILL &
T. W. STRATTON,
For Def'ts.

(Endorsed:) Motion for rehearing & new trial. Filed November 14th, 1871. John Lewis, clerk.

538 Which motion coming on to be heard, the defendants insisted upon the same; but the court overruled said motion, and these defendants then and there excepted, and pray that this bill of exceptions in their behalf may be made part of the record, which is accordingly done, as witness the hand and seal of the court at this term.

Defendant Cowan's motion for a rehearing & new trial.

And defendant John Epes Cowan, and all the other defendants, then and there excepted; and he, the defendant, the said John Epes Cowan, filed his motion in the said court for a rehearing and new trial on the 14th November, 1871, as follows:

The defendant John Epes Cowan, by his counsel, now moves the court for a rehearing of the cause above styled, upon the following grounds and for the reason herein stated and set forth:

1st. Because the decree as made is erroneous, and ought not to have been made in favor of the plaintiff and against the defendants in this case, or any one or more of them.

2nd. Because the court had no power, jurisdiction, and authority to order, adjudge, and decree that the patent as issued to the heirs at law of Thomas Chartrand, sr., was not and is not well and lawfully issued.

3rd. Because there was no evidence before the court at the hearing, either in the form of depositions and documents, or by witnesses examamined in open court, tending to show that the decision of any of the officers of the Land Department of the United States upon the pre-
emption claim of Thomas Chartrand, sr., or of his heirs at law
539 was procured by fraud, or that it was made under a mistaken view of the facts connected with the making and prosecution of the said claim.

4th. Because the decree as made by the court is contrary to the law and unwarranted by the evidence in the cause. Wherefore the defendant prays the court to set aside said decree and to grant him a rehearing and new trial in the said cause.

T. G. C. DAVIS &
C. C. WHITTELSEY,
Counsel for Cowan.

And the court, on the 16th of December, 1871, overruled the said motion, and he the said Cowan then and there, together with the other defendants, excepted to the ruling of the court, and now prays that this his bill of exceptions be signed and made a part of the record in this cause, which is done in open court and in the said December term, 1871.

GEORGE A. MADILL, *Judge.* [SEAL.]

And afterwards, to wit, on the 3rd day of January, 1872, the defendant Cowan filed in said cause a bill of exceptions in the words and figures following, to wit:

Bill of exceptions by Cowan.

Be it remembered that this cause on for trial on May 19, 1871, and to sustain the issues on their respective parts the plaintiffs and defendants presented the evidence as detailed in the bill of exceptions presented by S. M. Coleman & als.; and the said Cowan took and presented the same exceptions to the ruling of the court as stated in said bill of exceptions.

And after hearing of said cause the court took the same under advisement until Nov. 13th, 1871, when the ordered a decree for the plaintiff, to which defendants all excepted; and on the 14th
540 Nov'r, 1871, said Cowan filed his motion for rehearing and new trial, as follows: (See page 247 of this transcript.) Which motion the court, on Dec. 16, overruled; to which decision the defendant Cowan and the other defendants excepted.

Wherefore said Cowan, for himself, prays that this bill of exceptions be signed and made part of the record, which is done this day of Dec'r, 1871.

GEORGE A. MADILL, *Judge.* [SEAL.

At the general term of this court, being the December term, 1871, thereof, the following further proceedings were had in this cause, to wit:

General term.—Order affirming judgment.

TUESDAY, *January 30th*, 1872.

Now come the parties, by their respective attorneys, and by request it is ordered by the court that the judgment rendered herein by the court at special term be, and the same is, in all things hereby affirmed pro forma, and that defendants pay the costs of this proceeding, and that execution issue therefor.

General term.—Order allowing appeal.

FRIDAY, *February 2nd*, 1872.

Now come the defendants, by their attorneys, and file a bill of exceptions, and also affidavits for an appeal, and on their motion an appeal is allowed them to the supreme court from the judgment herein rendered; and thereupon John Epes Cowan, one of the defendants herein, files an appeal-bond, which is approved by the court; and also come the other defendants and file a bond, which is approved by the court.
541 Which bills of exceptions, affidavits for appeal, and appeal-bonds are in the words and figures following, to wit:

Bill of exceptions.—General term.

Before general term of the December term, 1871.

Be it remembered that at this same term, on the 30th day of January, 1872, came the respective parties in this cause, and submitted the same, and the court, having heard the same, affirmed the judgment and decree

of the circuit court pro forma; to which affirmation of the judgment or decree aforesaid the defendants then and there *accepted*, and submit this their bill of exceptions at the term aforesaid, and on the 2nd day of February, 1872, and pray that an appeal be allowed them to the supreme court of the State of Missouri.

E. B. EWING, [SEAL.]
Presiding Judge.

And subsequently, to wit, February 2nd, 1872, there was filed in said cause an affidavit for appeal in words and figures as follows:

Affidavits for appeal.

Before general term of the December term, 1871.

STATE OF MISSOURI,
County of St. Louis, ss:

1. W. Stratton, attorney for defendants, appellants, except Cowan, being duly sworn, makes oath and says that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellants *is* aggrieved by the judgment or decision of the court.

T. W. STRATTON.

Sworn to and subscribed before me this second day of February, A. D. 1872.

J. LEWIS, *Clk.*

542 And on the same day, to wit, February 2nd, 1872, the defendant Cowan filed in said cause an affidavit for appeal in words and figures as follows, to wit:

Before the general term of the St. Louis cir. ct., Dec'r term, 1871.

STATE OF MISSOURI,
County of St. Louis, ss:

John E. Cowan, one of the defendants, being duly sworn, makes oath and says that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

J. EPES COWAN.

Sworn to and subscribed before me this 2d day of February, A. D. 1872.

JNO. LEWIS, *Clk.*

Appeal-bond.

And on the same day, to wit, February 2nd, 1872, the defendant Cowan filed in said cause an appeal-bond in words and figures as follows, to wit:

Know all men by these presents that we, John E. Cowan as principal, and Wilbur F. Brinck and T. G. C. Davis as sureties, are held and firmly bound unto Wm. M. McPherson in the sum of five hundred dollars, for

the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis this second day of Feb'y, A. D. 1872.

543 The condition of the above obligation is such, that whereas John E. Cowan, Samuel M. Coleman, Sam'l V. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Paschal F. Chartrand, and Antoine F. Chartrand have appealed from the judgment rendered against them and in favor of Wm. M. McPherson, in the circuit court of St. Louis County, for the sum of dollars and cents, together with costs:

Now, if said appellants shall prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the circuit court of St. Louis County to give, and if the judgment, or any part thereof, be affirmed, will comply with and perform the same so far as it may be affirmed, and pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force and effect.

J. EPES COWAN. [SEAL.]
WILBUR F. BRINCK. [SEAL.]
T. G. C. DAVIS. [SEAL.]

Approved in open court.
Attest: J. LEWIS, *Clerk.*

And subsequently, to wit, on the 5th day of February, 1872, there was filed in said cause an appeal-bond in words and figures as follows, to wit:

Appeal-bonds.

Know all men by these presents that we, T. W. Stratton as principal, and Britton A. Hill and Alphonse T. Perrier as sureties, are held and firmly bound unto William M. McPherson in the sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and

544 severally, firmly by the' presents, sealed with our seals, and dated at St. Louis this third day of February, A. D. 1872.

The condition of the above obligation is such that whereas have appealed from the judgment rendered against them and in favor of William M. McPherson, in the circuit court of St. Louis County, for the sum of five hundred dollars and cents, together with costs:

Now, if said appellant shall prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the circuit court of St. Louis County to give, and if the judgment or any part thereof be affirmed, will comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force and effect.

T. W. STRATTON. [SEAL.]
B. A. HILL. [SEAL.]
ALPHONSE F. PERRIER. [SEAL.]

Approved in open court Febr'y 3rd, 1871.

JNO. LEWIS, *Clk.*

Clerk's certificate to transcript.

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court of St. Louis County, State of Missouri, hereby certify the foregoing to be a true and complete transcript of the record and proceedings had in the case of Wm. M. McPherson vs. John Epes Cowan et al., as fully as the same remain on file and of record in my office.

545 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, this second day of March, A. D. 1872.

[SEAL.] JOHN LEWIS, *Clerk.*

546 List of all the letters, reports, and other documents on file in the surveyor-general's office relative to the "Carondelet commons."

Letter.—Melburn to Magenis.

SURVEYOR'S OFFICE,
St. Louis, 18th May, 1839.

SIR: In compliance with your letter of the 16th inst., I enclose herewith a plat, marked "A," of the survey of the common of Carondelet, and a copy of the notes, marked "B," of a Spanish survey of a boundary-line thereof, from the S. W. corner of the common-field to the river Des Peres. These papers, together with the several acts of Congress on the subject, and a copy from pages 195 and 196 of book D, in the office of the recorder of land-titles, to which you are referred, contain all the evidence in this office pertaining to the subject.

I am, respectfully, sir, your obedient servant,
(Signed) WILLIAM MELBURN,
Surveyor-General.

ARTHUR L. MAGENIS,
U. S. Attorney for the District of Missouri.

Letter.—Melburn to Atkinson.

SURVEYOR-GENERAL'S OFFICE,
St. Louis, 18th of August, 1839.

SIR: Your letter of the 2nd of July, asking for information relative to the Carondelet common, was duly received, and would have been forthwith replied to but that the pressing duties and engagements
547 of this office put it altogether out of my power. I hope, however, that no material inconvenience will result from the delay.

The "claim" of the inhabitants of Carondelet to common will be found in the enclosed copy, marked "A," of their notice to the U. S. commissioners, dated 7th of June, 1808, as certified to this office by the recorder of land-titles on the 24th of April, 1829. The same, marke' "B," with that part which is in the French language, translated by Adolphe Renard, professor of the French and Spanish languages, and translator for this office, is also enclosed.

For the confirmation of this claim to common I must refer you to the first section of the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

And for the final and ful' relinquishment of all the right, title, and interest of the United States you are referred to the act of Congress of the 27th of January, 1831, entitled "An act further supplemental to an act entitled 'An act making further provision for settling the claim to land in the Territory of Missouri,'" passed the 13th day of June, one thousand eight hundred and twelve.

A plat, marked "C," of the approved survey of said common, and showing the surveys of six confirmed claims within the limits thereof, is also enclosed.

The notes of the survey of a line from the common-field land to the river Des Peres, which forms a part of the notice of claim to the commissioners, are on record in the Spanish "Registre d'arpentage," in this office.

I am, sir, very respectfully, your obed't servant,
(Signed) WILLIAM MELBURN,
Surveyor-General.

Brigadier-General ATKINSON,
U. States Army.

548 B, *(referred to in the foregoing letter.)—Claim to commons, June 7,* 1808.

To the recorder of land-claims for the Territory of Louisiana:

Take notice that we, the inhabitants and settlers of the village of Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land situate adjoining said village, by virtue of a concession from Dn. Zeno Trudeau, lieut. gov'r of Upper Louisiana, dated the 7th of Dec., 1796. On the part of said inhabitants.

St. Louis, June 7th, 1808.

BTE. LAJOYE, FILS,
sa
LOUIS + MENARD.
marque.

Supposed grant, Dec. 6, 1796.

To Don Zenon Trudeau, captain of the stationary regiment of Louisiana, lieutenant-governor and commander-in-chief of the western part of Illinois:

The deplorable condition in which the village of Carondelet is about to fall, now and hereafter, because of the exportation of wood, (here the text is deficient,) the honor to state, that after the petition he handed to you on the 5th of Oct. last, for the purpose of obtaining the continuation of their lands, you told them, that although you could not accede to his demand, you would, however, make your efforts to give him forty arpens above their park. The village prays you to be willing to turn your attention to the fact that he has at present a great inducement to work, on account of this mill; and that it is his intention to sow with graine as much land as he is able to do. Therefore this petition is given in charge to Mr. Gamache, to be delivered to you, and he hopes that you will be pleased to take into your consideration his demand, and the misery which threatens him, and grant to him a continuance of the lands,
(common-fields,) taking for his limits the limit of Mr. Constant;
549 thence to the Mississippi and the river Des Peres for limits, coming to the same village of Carondelet. He expects everything

from your goodness, and he believes you will accord his demand. He shall never cease to be thankful to you.

At the village of Carondelet, the 6th of Dec., 1796.

his
JNO. B. + GAMACHE.
mark.

Answer to supposed grant, Dec. 7, 1796.

The land which is asked for is included in the tract that was reserved to furnish the wood necessary for the use of the village of Carondelet, and the demand made by Mr. Gamache cannot be accorded, as it is for all the concession granted in the direction of the line taken at the end of the lands of the said village, and running parallel to the Mississippi 150 arpens lower.

St. Louis, the 7th Dec., 1796.

ZENON TRUDEAU.

Report of Antoine Soulard.

UPPER LOUISIANA, VILLAGE OF CARONDELET,
District of St. Louis of Illinois:

L. B, No. 139, f. 27.

We, the undersigned, a surveyor commissioned by the government, do certify to all to whom it shall appertaine that on this day, 21st of Dec., in virtue of the order transmitted by the lieuten't-governor to Mr. de Treget, captain commandant of the said village, enjoining upon the inhabitants to make know' the line of a tract of land which was conceded to them on the 7th of Dec., 1796, which line must be parallel with that of Messrs. Ant'e Reilhe and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands, which had been formerly surveyed by Mr. P're Chouteau in virtue of an order from the lieut't-governor. Having taken the bearing course of these same lands, I found that they ran S. 28° W. I followed this same course 23 arp's 3½ poles, at which distance I intersected the "river Des Peres." The end of the line on the bank of the same river has been bounded with a stone, having for witness two flint-stones and a flattened lead bullet. The land of Mr. Alvarez must be distant from the said stone found 24 feet, in following the same line parallel; and in order that the said inhabitants may prove the same I have delivered these presents.

550

St. Louis of Illinois, the 25th of Dec., 1797.

ANT'E SOULARD.

I do certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure, or cause to be measured by one of my deputies, in their behalf a portion of land which was granted to them as a common by the lieut. govr, Don Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himself to the village of Carondelet for that purpose. But at the moment he would set his instrument he found it out of order and of no use to him, an inconvenience which did prevent the said survey to be then made. And the short space of time that was left to attend

to it again has hindered me from being able to satisfy *to* the calls made on me by the citizens of the settlement of Carondelet.

In faith whereof I have delivered the presents to the interested, that they may serve the same whenever needed.

St. Louis, 18th Feb., 1806.

ANTOINE SOULARD,
Surveyor-General Territory Louisiana.

551 *Report of Whitcomb, Sept. 24th, 1839.*

GENERAL LAND-OFFICE, *Sept. 24th*, 1839.

SIR: A plat of a survey No. 3102, certified by you on the 18th May last, of the common of Carondelet, as surveyed by Joseph C. Brown, deputy surveyor, in March, 1834, with your communication of that date to Arthur L. Magenis, esq., U. States district attorney, and a transcript from "page 6 of registre d'arpentage, St. Louis, A," have been received at this Office, with a letter of the 22d June last from the Secretary of War. The subject is brought to the attention of the Office by the Secretary of War with a view, as appears from his communication, that this Office should take measures to sell the land included within the lines marked with red on the accompanying plat, (the plat above referred to,) from the river Des Peres south, claimed as common by the village of Carondelet, but believed to belong to the United States.

In that communication it is also stated that the military reservation desired for the U. States, round the fort at Jefferson Barracks, will be designated whenever the land-office is prepared to sell the residue of this tract of land.

On this subject I herewith enclose a copy of a report, No. 244, of the Solicitor of this Office, in which you will perceive that he is of opinion "that Brown's survey, within the limits of which are six private claims, includes several thousand acres to which the village of Carondelet has no legal or equitable title," and "if such is the fact, there is no objection to a survey and sale as public land of all that part of the tract not needed for military purposes or covered by private claims. Indeed, that is the proper course to pursue." That instructions should be given to the surveyor-general to have the survey executed as required by law, (act of June 13th, 1812, page 216, part 1st, Laws and Instructions, &c., to which the acts chap. 311 and 406 are supplementary,) viz, "to
552 retrace the exterior of the village, including the village lots, common-field and out lots, and commons, giving the villiges the same lines which they had in 1803; and after laying down the private claims to section, and subdivide the residue, and return the official plat," that the "surveyor-general should refer to the ancient maps and title-papers in his and the recorder's office, and from them ascertain what were the exterior lines," &c.

Concurring in the views of the Solicitor as stated, I request you will make a thorough and careful examination into the whole matter in order to determine the limits of the commons of Carondelet to which the villages are legally entitled, and that you will cause a survey to be made accordingly, and that such lands as may not be found to be within the limits of the commons aforesaid, or covered by private claims, may be surveyed as public lands, and plats of the same duly returned.

You are requested to make a detailed report of all your proceeding, accompanied by copies of all the papers or records that you may be able

to find having a bearing on the claim in question, with a diagram exhibiting the limits of the commons according to the evidences of title.

Very respectfully, your obedient servant,

JAS. WHITCOMB,
Commissioner.

WILLIAM MELBURN, Esq.,
Surveyor-General, St. Louis, Mo.

553 *Letter of Burchard, Solicitor.*

No. 244.] GENERAL LAND-OFFICE,
Solicitor's Bureau, August 6th, 1839.

SIR: In a letter of the 22nd June, the Secretary at War requests you to take measures to sell the land south of the river Des Peres, claimed as commons by the village of Carondelet, but believed to belong to the United States.

Accompanying the reference there is also an opinion of the district attorney for Missouri, and sundry papers.

The act of June 13th, 1812, P. I., page 216, confirms the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons in, adjoining, and belonging to the village of Carondelet, which lots have been inhabited, cultivated, or possessed prior to the 20th Dec., 1803, and makes it the duty of the deputy surveyor (when the same had not been already done) to survey the out-boundary of the village, so as to include the out-lots, common-field lots, and commons thereto belonging, and transmit a plat of the survey to the surveyor-general, to be forwarded to the General Land-Office.

Two supplementary acts have been passed, (chaps. 311 and 406,) but as they do not seem to touch the merits of the present enquiry, further reference is deemed necessary.

The act of 1812 and the supplementary acts quoted dispose of all the lands included within the exterior lines which the deputies were required to run by the act of 1812. A copy of the plat of the commons of Carondelet as surveyed by Brown, deputy surveyor, in March, 1834, under the instructions of the surveyor-general of 10th February, 1834, authorizing him to retrace the lines and re-establish the corners of the former survey thereof, &c., has been furnished by the surveyor-general, which shows that Brown's survey extends south of the river Des
554 Peres, so as to enclose several thousand acres of land, and to include within the exteriors six private claims, three of which are confirmed by the act of 1836.

The concessions furnished evidence that the land in question was not regarded by the Spanish officers as parcel of the village common, because they were all forbidden to grant village commons, and the legal presumption is that they obeyed the instructions, and that therefore this land was not a common, but public domain. The title which the inhabitants have exhibited to the land south of the river Des Peres is the statement of Governor Trudeau (dated Dec. 7th, 1796) rejecting a petition of Gamache, praying for a grant of land below the village, which states "that no concession can be made in the direction of a line taken from the end of the field-lots of the village and running parallel with the Mississippi, and further down said river one hundred and fifty arpens," because the same is within the limits of the land reserved for the purpose of furnishing wood for the village. This was shown to the board of commissioners for adjusting titles, and accompanied with proof that the inhabitants cut wood below the village for many years, &c., (2d Am. State Papers, 549,) but the claim was rejected.

It appears from a transcript of a survey made Feb'y 25th, 1797, of a tract conceded to the inhabitants Sept. 7th, 1796, that the south line of the grant is bounded by the river Des Peres. This survey being made subsequent to the rejection of Gamache's petition, if it be, as is supposed, a survey of the commons, will overrule any inference to be drawn from the expressions used by the governor in refusing the prayer of Gamache.

My belief is that Brown's survey includes several thousand acres to which the village of Carondelet has no legal or equitable title, and of the same opinion is the district attorney of Missouri. If such is the fact, there is no objection to a survey and sale as public land of all
555 that part of the tract not needed for military purposes or covered by private claims. Indeed, that is the proper course to pursue.

I advise giving instructions to the surveyor-general to have the survey executed as required by law, viz, to retrace the exterior of the village, including the village-lots, common-field and out lots, and commons, giving the villagers the same lines which they had in 1803 and no more, unless prior to the act of 1812 the corporate limits had been fixed and extended beyond the limits of 1803; and after laying down the private claims to sections, and subdivide the residue and return the official plats, the surveyor-general should refer to the ancient maps and title-papers in his and the recorder's office, and from them ascertain what were the exterior lines of the just claims in 1803. It will be but to require copies of the papers and a report from him.

I am, &c.,

M. BIRCHARD,
Solicitor.

To JAMES WHITCOMB, Esq.,
Commissioner, &c., &c.

Report of Milburn, Dec. 5, 1839.

SURVEYOR-GENERAL'S OFFICE,
St. Louis, 5th December, 1839.

SIR: I enclose herewith, for the information of the corporate authority of the town of Carondelet, the copy of a letter dated the 24th of Sept., 1839, from the Comm'r of the General Land-Office in relation to the land embraced in the survey of the Carondelet common south of the river Des Peres, and also the opinion of the Solicitor of the General Land-Office on the same subject.

556 As it is my wish to report to the Commissioner of the General Land-Office without delay, I have requested that any information which the trustees may desire to furnish be handed in at the earliest convenience.

I am, sir, respectfully, your obed't servant,

WILLIAM MILBURN,
Surveyor-General.

NICHOLAS POPE, Esq.,
Chairman of the Board of Trustees of the Town of Carondelet.

(See answer on page 46 of this book, document G.)

Report of Milburn, Dec. 14, 1839.

SURVEYOR-GENERAL'S OFFICE,
St. Louis, 14th Dec., 1839.

SIR: I am instructed by the Commissioner of the General Land-Office

to make a thorough and careful examination of the claim of the inhabitants of Carondelet to common, and to report to him in detail all my operations.

To enable me to comply with this instructions, I have to request a copy from the records of your office of all the documents relating to said common which have not heretofore been furnished this office.

The only paper which I find on file here from your office having a direct bearing on the subject is a copy of a notice to the recorder and the accompanying papers from pages 195 and 196 of record-book D.

The papers in this office which have an indirect bearing are those relating to the grants and confirmations of the following claims:

Eugene Alvarez, certificate 1339
Julien Chouquette, " 904
} Of the old board of commissioners.

Gabriel Constant, confirmation for 35 arpens by the act of Congress of the 29th of April, 1816:

557 Gabriel Cerre, decision 60
Treget Delor, " 121
Jean B. Martigny, " 170
Sophia Borlage, " 279
} Of the late board of commissioners, and confirmed by the act of 4th July, 1836.

These papers are defective in the following particulars:

1st. Those which relate to the claims of Alvarez, Chouquette, and Constant are mere abstracts of the confirmation, and contain nothing whatever concerning the origin of the titles either with the Spanish or U. S. Government, nor of the evidence upon which the confirmations were founded.

2nd. Your certificates of decisions, No. 60, 170, and 279 of the late board of comm'rs, seem to contain copies of all the proceedings which had been had therein; but the certificate of the confirmation under decisionNo. 121 gives nothing more from your records then the plat and notes of a survey by Joseph C. Brown.

You will please to make good these defective papers, and furnish me with such other information as your records afford that is in any way whatever connected with the claim to the common of Carondelet.

I am, respectfully, sir, your obed'n' servant,

WILLIAM MILBURN,
Surveyor-General.

T. R. CONWAY, Esq.,
M. P. Recorder of Land-Titles for the State of Missouri, St. Louis.

Letter.—Milburn to Whitcomb.

B.] SURVEYOR'S OFFICE,
St. Louis, 29th February, 1840.

SIR: I could not, consistent with the then pressing duties of this office, take up the subject of the Carondelet common, required by your letter of the 24th of Sept., until some time in the last part of the month of November. Upon examining the matter, I considered it righ'
558 and proper to inform the corporate authorities of the village of what was intended, and, accordingly, addressed them a note, of which the enclosed paper, numbered 1, is a copy. I received for answer a note, and enclose you a copy thereof numbered 2. As they asked me to withhold my final action or report on the subject until they communicated all the information they could state, it was in my opinion due to them as a matter of courtesy to give ample time, even much more than

I might consider necessary to prepare the intended statement. Their report or statement dated the 12th instant was received a short time back, and the business will now be attended to at an early day. This information is given with reference to your letter of the 13th instant, calling my attention to the subject.

I am, very respectfully, sir, your obed't servant,

WILLIAM MILBURN,

Surveyor of the Public Lands in the States of Illinois and Missouri.

JAMES WHITCOMB, Esq.,

Com'r of the General Land-Office, City of Washington.

Report on the Carondelet commons.

Report on the Carondelet commons.

SURVEYOR'S OFFICE, 15*th April*, 1840.

SIR: In compliance with your letter of the 24th of Sept., 1839, I have examined all the papers in this office and all which I can find in the office of the U. S. recorder of land-titles that have any bearing,
559 either directly or indirectly, on the title of the inhabitants of Carondelet to common south of the river Des Peres, and submit for your consideration every fact which has come to my knowledge in relation thereto, and give the conclusion that I draw therefrom. I will first take up the subject under the heads and in the order following:

1st. A statement in detail of the progress of the claim, from its presentation for record to U. States recorder of land-titles up to the passage of the act of Congress of the 13th of June, 1812.

2nd. Give the construction put upon the act of 13th June, 1812, with respect to the common of Carondelet by the several surveyors-general for this district and the present recorder of land-titles, and the evidence of their respective constructions.

3rd. Consider some of the arguments of the Solicitor of the General Land-Office against the validity of the title of the inhabitants of Carondelet to common south of the river Des Peres.

1st. In conformity with the 5th section of the act of Congress approved the 3d March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," the inhabitants of Vide Poche, (Carondelet,) on the 7th of June, 1808, presented to the recorder of land-titles a notice in writing and the written evidence of their claim to common; which notice in writing and written evidence w*as* duly recorded on page' 195 and 196, book D, in the office of said recorder, as will be seen by the enclosed copy thereof, marked A. This written evidence, placed upon record in conformity with law, furnishes with the following facts:

1st. In answer to the petition of Gamache of the 6th of Dec., 1796, for a grant of the land lying between the field-land and the village of
560 Carondelet and the river Des Peres, and extending from Constant to the Mississippi, the Spanish lieutenant-governor declared in writing, on the 7th of the same month, that the land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet; and the demand made by Mr. Gamache, as well as all concession granted in the direction of the line beginning at the end of the lands of said village and running parallel to the Mississippi one hundred and fifty arpens lower, cannot be admitted.

2nd. That on the 21st of Dec., 1797, Antoine Soulard, the surveyor-general, in virtue of the order of the lieutenant-governor enjoining upon the inhabitants of Carondelet to make known the line of a tract which was conceded to them on the 7th of Dec., 1796, commenced the survey of said line. He first ascertained that the course of the line of which it was to be a prolongation was S. 28° W., and he followed the same course 23 arpens 3 ps. ½, at which distance he intersected the river Des Peres and ceased operations.

3rd. That the said surveyor-general (Soulard) afterwards sent a deputy to complete the survey of the common, and that the deputy failed in the undertaking on account of his instrument being out of order.

We now come to the proceeding before the board of commissioners, which you will find in the accompanying papers marked B and C.

Throughout the proceedings of the board, the land claimed and asked to be confirmed by the inhabitants of Carondelet as common, said to be 6,000 arpens, is the same which the lieutenant-governor declared on the 7th of Dec., 1796, had been reserved to furnish the wood necessary to the village, and comprised within the limits designated in said
561 declaration in which no grants could be admit'ed, and which Chouteau and Provenchere proved had been used as common since about the year 1770.

The final decision of the board of the 2d of January, 1812, is in these words: "It is the opinion of the majority of the board that this claim ought not to be granted, Clement B. Penrose, commissioner, voting for a confirmation thereof under the usages and customs of the Spanish government." (See also Am. State Papers, p. 672, vol. 2, Public Lands.)

The board having closed its labors on the 24th of January, 1812, sent the report to Washington by Commissioner Penrose. (See page 677 Am. State Papers, vol. 3, Public Lands.)

On the 20th March, 1812, ex-Commissioner Penrose, who was then in Washington City, submitted for the consideration of Mr. Gallatin, Secretary of the Treasury, a classification of the claims which had not been finally confirmed or granted by the board of commissioners, and some remarks thereon, (see page 447 and following of vol. 2 State Papers, before referred to.) The 9th class of Major Penrose consists of claims for commons, viz, St. Charles, St. Louis, and Carondelet, these being the towns whose claims had been rejected by the board, and in his remarks thereon (see page 449) he says, "the ninth class ought to be confirmed; they would have been, under every practice we have seen, had the Spanish government continued the possession," &c. On the 24th of the same month Major Penrose condensed for Mr. Gallatin his classification of the claims on the 20th, in which condensation the 5th class is as follows: "Claim for town or villages, their common-fields or field-lots, and their commons, either recorded or not recorded." In remarking upon this classification, Major Penrose says: "By the spirit of the ordinance, all these claims would have been confirmed or granted, although not embraced by the strict letter." And he comes to the conclusion
562 with reference to what he supposed to be the intention of our Government, namely, "to do justice to their newly-acquired citizens," that "there can be no hesitation in confirming or granting such claims as are comprehended in the five foregoing classes."

These two letters of Ex-Commissioner Penrose were communicated by Mr. Gallatin to the House of Representatives on the 22d April, 1812. We also find on pages 450 and 451 of vol. 2, Am. State Papers, a classification of the "claim," by Col. Riddick, who had been employed as clerk of the late board, addressed to Jeremiah Morrow, the chairman of the

Committee of Public Lands. H's 49, class of claim embraces villages, commons, common fields, and lands adjacent, given to the inhabitants individually for cultivation, possessed to the 20th of Dec., 1803. Col. Riddick remarks upon this classification: "The foregoing table or list is intended to show the claims of Louisiana in all the variety of shades in which it is possible for the claimants to place them, out of which a selection may be made of such as are not yet provided for by law, but nevertheless ou't in justice to be confirmed or granted to the claim's; and he concludes with recommending that the 49th class be confirmed at once by the outer lines of a survey to be made by the principal deputy," &c.

Following quickly after the note of Commissioner Penrose, that the Carondelet common should be confirmed as claimed before the board, his classification of the "claims" for Mr. Gallatin, Secretary of the Treasury, on the 20th and 24' of March, 1812, which Mr. Gallatin communicated to Congress on the 22d of April, and in which classification Major Penrose distinctly refers to the claims for commons, as presented to the board, and the classification by Col. Riddick addressed to the chairman of the Committee of Public Lands, in which he recommends
that the claim to commons be confirmed, not by a survey already
563 made, but by a survey to be made. We have the act of Congress
of the 13th of June, 1812, which enacts "that the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons, in, adjoining, and belonging to the several towns or villages of Portage des Sioux," &c., "Carondelet," &c., "which lots have been inhabited, cultivated, or possessed, prior to the 20th day of Dec., 1803, shall be, and the same are hereby, confirmed to the inhabitants of the respective towns or villages aforesaid, according to their right *or right* or rights in common thereto, &c., and it shall be the duty of the principal surveyor for the said Territory, as soon as may be, to survey or cause to be surveyed and marked, (where the same has not already been done according to law,) the out-boundary lines of the several towns or villages, so as to include the out-lots, common-field lots, and commons thereto respectively belonging," &c.

It will be observed that this law of the 13th of June, 1812, did not provide for further investigation of the claims for commons, but confirmed them absolutely with reference of course to some determinate boundaries; for the identifications whereof we had the indisputable means, which, in the case of the common of Carondelet, can be no other than the written declaration of Gov'r Trudeau, of the 7th of Dec., 1796, which had been duly recorded in the office of the U. States recorder of land-titles, unless the quantity specified is to have precedence of the boundaries designated, in which event, according to the practice of this office, the claimant would be allowed the privilege of directing on which side or end the excess or deficiency should be thrown off or taken in. The subject of the commons, &c., was brought to the consideration of Congress by Mr. Gallatin, Secretary of the Treasury, who, it appears from what has been stated, consulted and advised with Ex-Commissioner Penrose, and communicated to the
House of Representatives the information relating thereto, which
564 he derived from that source; indeed it is well understood here
that Mr. Penrose drafted the bill that was enacted by Congress, and approved the 13th of June, 1812, and in addition to the information thus derived from Mr. Penrose, we find Mr. Morrow, the chairman of the Land Committee, consulting Col. Riddick, late clerk of the board, who, as well as Mr. Penrose, advised the confirmation of the commons as claimed.

If there was any doubt as to the true meaning of the law approved the 13th of June, 1812, when considered by itself, the train of operation here detailed seems to be conclusive, that Congress intended to confirm and did confirm the commons of Carondelet according to the claim therefor of record in the office of the recorder of land-titles; for what claim for common can the said act of the 13th of June, 1812, refer if it not to the claim on record in the U. S. recorder's office, and which had been before the board for confirmation? This claim was for the specified quantity of 6,000 arpens as being the area comprised within certain designated boundaries. The only question, therefore, which can arise, according to my understanding, is, whether the specified quantity or the designated boundaries will control.

The requirements of inhabitation, cultivation, or possession can apply to the lots only. They have no connection with the common in the wording of the law, if I understand it rightly; indeed, inhabitation and cultivation are foreign to the uses for which commons were granted. If, however, it be decided that the requisite of possession has reference to the common, the testimony of Chouteau and Provenchere before the board prior to the passage of the law (accompanying paper B) settles that point. They prove that the land south of the village and now (at the time of testifying) claimed, was made use of and possessed in the usual way of possessing common since about the year 1770, and
565 the extent of the common then claimed, and thus proven to have been possessed, is distinctly fixed in the declaration of the lieutenant-governor by boundaries (although not run) so definite that they cannot be misunderstood.

2nd. I will now proceed with the construction of the law of the 13th of June, 1812, by the several surveyors-general of this district, and the present recorder of land-titles.

1st. William Rector, surveyor-general: See the accompanying copy, marked "D," of the field-notes of a survey executed under his authority, shortly after the passage of the law, and a plat of the same.

2nd. William McRee, surveyor-general: See the accompanying , marked "E," from the record, of his letter to Charles Biddle, dated 25th of April, 1829, in answer to Mr. Biddle's application for the survey of a New Madrid claim, which letter of Col. McRee closes with this unequivocal paragraph: "The original merits of the claim to common, set up by the inhabitants of Carondelet, the validity of the evidence or genuineness of the documents adduced by them before the board of commissioners in support of their pretensions, were no doubt very proper subjects for the consideration of Congress prior to the passage of the act of the 13th of June, 1812, confirming their claim; but they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary-lines of the tract, as claimed before the board of commissioners, provided these boundaries can be established without interfering with any prior confirmed claim."

3rd. Elias T. Langham, surveyor-general: See a copy, marked "F," of his instructions to Joseph C. Brown, to connect with the adjoining public and private surveys the survey of the claim of the inhabit-
566 ants of Carondelet for common, as surveyed under the authority of General Rector; and also the copy, marked "G," of an approved plat and description of said survey, as executed and connected by Brown, under the instructions aforesaid.

4th. Daniel Dunklin, surveyor-general: See a copy, marked "H," of his voucher No. 3 of account-current for the 2nd quarter of 1838, under the

general surveying appropriation, which shows that he paid Mr. Brown for running the lines of the commons and connecting them with the lines of the adjacent public and private surveys under Mr. Langham's instructions of the 10th of February, 1834, and thereby approved the proceeding; for had he decided that the common was not confirmed, or if he had had any doubts on the subject, he would have objected to the operation as illegal, and would not have paid for the survey, knowing, as he did, that an account for payments for illegal work would be disallowed in his settlement at the Treasury.

5th. F. R. Conway, the present recorder of land-titles: See the accompanying copy, marked "I," of the confirmation-certificate issued on the 22nd of August, 1834. It may be proper to state that I have not found any written evidence of the construction of the law, by either Mr. Bates or Mr. Hunt, the predecessors of Mr. Conway.

I do not furnish this construction of the law by the surveyor-general and the recorder, nor the vote of Commissioner Penrose and the opinions and statements of said Penrose and of Col. Riddick, under the belief that they are to control the undisputed meaning of the law; but they may have due weight, in case of doubt, in showing first the feelings and opinions of those who were mainly instrumental in the passage of the act; and, secondly, the understanding of those whose especial business it has been to carry the law into effect, and who had no other interest in the matter than the obligation of performing in a proper manner
567 the duty required of them as officers appointed to execute the laws of the land.

3rd. I will now consider some of the arguments of the solicitor of the General Land-Office against the validity of the claim of the inhabitants of Carondelet to common south of the river Des Peres.

The solicitor says, with reference to the six private claims within the common as surveyed by Brown, "These concessions furnish evidence that the land in question was not regarded by the Spanish officers as parcel of the village-commons, because they were all forbidden to grant village-commons, and the legal presumption is that they obeyed the instruction, and that, therefore, this land was not a common, but public domain."

With due respect for the opinion of the solicitor, I think a further examination cannot do otherwise than overcome this objection, as it will be seen that of the six claims to which he refers, only five are founded on Spanish authority, and we have no evidence whatever of an action on either one of the five by the Spanish officers after the declaration of the lieutenant-governor of the 7th of December 1796, on which day, it seems from the certificate of Soulard, (accompanying paper A,) the land was conceded to the inhabitants of the village, having been possessed and used as common since about 1770. (See the accompanying paper B.) Indeed, with but little exception these five claims all seem to have lain dormant from their conditional incipiency until their revival under the laws of the United States.

I will take up the six claims separately in the order of their confirmation, and examine them with reference to the foregoing objection of the solicitor, and take such other notice of them as may seem to have any bearing on the general object of this communication. But before
568 proceeding, I will observe that the Spanish concessions generally contained a condition, either expressed or understood, that they were not to be prejudicial to the rights of others, and that the lands belonged to the King's domain; this being a necessary precaution because connected maps on which the land was platted down when granted or

surveyed, did not belong to their system of laying off and disposing of the public domain; and we find that it was the universal custom with Surveyor-General Soulard, before putting a party in possession by survey, to notify the surrounding neighbors, (when there were any,) and to certify on his return that his operations were performed in their presence.

The practice, therefore, must have been, when it was found that one of these conditional grants interfered with other rights, that the surveyor-general did not (as indeed he could not lawfully do) put the party in possession, but that the whole proceeding was arrested, and whilst the Spanish government continued in the possession, other land, no doubt, was given, when desired by the claimants, in lieu of the pre-occupied conditional concessions. If, therefore, it shall appear that none of the concessions south of the river Des Peres, in the Carondelet commons were surveyed, and the claimants were never put in lawful possession, and that the tract north of the river, although surveyed before the concession of the common was apparently forfeited for want of improvement within one year and a day, will it not be proper, in the absence of a better reason, to attribute this general failure to be ascertained interference of said claims with the land reserved for the use of the village and afterwards conceded as common, and the consequent intention of the government not to perfect any of the said individual titles, which is plainly indicated by the lieutenant-governor in refusing the pe-
569 tition of Gamache. In considering what is now to be said, it will be particularly necessary to distinguish in point of time between the general expression relative to the reservation of village-common and the concession therefor.

I will now take up the claims in the order before designated, and proceed with the examination thereof:

1st. Julien Chouquette, survey No. 904, for 640 arpens.

This title is not of Spanish origin, but it has its beginning with the Government of the United States, and was confirmed on the 25th of June, 1810, under the 2nd section of the act of Congress of the 3rd of March, 1807, which requires ten years' possession prior to the 20th day of December, 1803, where Chouquette only proves by his ex-parte testimony, inhabitation and cultivation for one year, and cultivation for six or seven years, which does not bring his possession down to 1803. He may have been dispossed, on account of intruding on the common, as was "Andre," the boat-builder, as proven by Col. Auguste Chouteau, in the accompanying document B. This case, therefore, furnishes no ground to doubt the validity of the grant of common to the inhabitants of Carondelet village by the Spanish government. See the accompanying paper marked "K," which contains all the evidence respecting this claim up to the confirmation.)

2nd. Gabriel Constant, junior, survey No. 2033, for 35 arpens.

It will be seen by the accompanying copy of his grant and Spanish survey, marked "L," that the land was conceded on the 4th of September, 1795, on condition that it be surveyed as soon as practicable, and also improved within a year and a day. The survey was executed on the 15th of April, 1796. But we find by the enclosed copy, marked "N," of the proceedings before the board, that Constant's only proof with
570 respect to inhabitation and cultivation, is, that he cultivated 9

consecutive years prior to 1810, and that he inhabited one winter 8 or 9 years prior to the 29th of December, 1813; it would therefore appear that before the concession of the common, Constant's conditional grant was forfeited for want of being improved within a year and a day. But this claim has nothing to do with the common south of the river Des Peres, as it lies altogether on the north side thereof, and within the bounds of what the solicitor considers Soulard's survey of the common on the 21st December, 1797, and which he seems to admit was confirmed by the law of the 13th of June, 1812.

3rd. Gabriel Cerre, survey No. 3067, for 400 arpens. Decision No. 60 of the late board of commissioners.

This claim was granted by Manuel Perez, on the 15th of March, 1789, upon condition to establish and improve it within one year. (See the accompanying paper, marked "N.")

The grant being upwards of seven years prior to the concession of the common, cannot operate to the prejudice to the claim for common, except so far as the identical land conditionally granted to Cerre is concerned.

There are other considerations with respect to this claim of Cerre's which it will be well to notice, namely: The land may not have been improved in one year from the date of the grant; as you will see, the witness is in doubt on that point, and he informs me it was cultivated but one season, and although it was proven before the board that the land was surveyed by Antoine Soulard, under the Spanish authorities, yet there is no survey on record, nor any certified copy or the original produced.

571 You will see by the document N that the plat produced is one of a survey executed by Mr. Brown, who in 1833 certified the plat and thinks that at all the corners marked "S" were found old corner-stones in 1822. Now, this survey by Mr. Brown is not an official survey by authority of the surveyor-general, but it is a private affair, and it is not 10 by 40 arpens, as granted to Cerre; and therefore the stones which were found cannot be corner-stones of a lawful survey of the grant. This is illustrated on the accompanying diagram, marked "O." Indeed so different is Mr. Brown's survey, executed in 1822 and certified in 1833, from the order of the Spanish governor, that Surveyor-General Dunklin disregarded it altogether in running out the tract under the confirmation, although he was repeatedly and urgently solicited to recognize it.

4th. Pierre Delor, 400 arpens, survey No. 2993. Under decision No. 121 of the late board of commissioners. (See the accompanying paper marked "P.")

This confirmation is founded on a paper produced to the board, and which, in the language of the board, purports to be a concession; but which does not appear in the proceedings to have been proved as genuine. I have, however, examined the original, which is now on file in the recorder's office, and have no doubt of the authenticity thereof. The order of the lieutenant-governor bears date 6th of December, 1796, (the day before his declaration, in accompanying paper A, relative to the common,) and directs the surveyor to put the petitioner in possession of the land he asks, provided it belongs to the King's domain, and is not prejudicial to any other concession heretofore granted. From the date of this order to the transfer of the country to the United States

572 was upward of 7 years, and we have no other evidence of a Spanish survey having been executed, than that Mr. Boli states he was several times shown a tree, said to be the corner of said land, as surveyed before Mr. Brown's operations in 1821, and that when Mr Brown was running the lines he (Boli) saw trees marked with old blazes, and heard of said Delor and others that these old lines were run by Bouvet, who was commissioned surveyor at the date of the concession, &c.

Mr. Brown, who would have been the proper person to prove the existence or appearance of old corners or live trees, is silent on that head, both in his affidavit and certificate and plat of survey. There is no evidence of inhabitation or cultivation under either the Spanish or American Government.

Mr. Delor was a man in office in the village, and unless he voluntarily abandoned the claim, or was deprived of it by lawful authority, would hardly have suffered it to sleep for 7 years without making a move towards being put in possession according to the customs of the country in order that he might obtain the title in due form, and make the establishment and improvements contemplated in his petition.

5th. Jean Baptiste Martigny, 480 arpens, sur. 3,119. Decision No. 170 of the late board of commissioners.

This tract was conditionally granted on the 25th of April, 1783, more than 14 years before the conceding of the common. One of the conditions of this grant is, that Martigny improves the plantation he asks for; on the contrary, the land to be incorporated *to* the royal domain. The requirement of improvement had of course reference to the time limited in the Spanish regulations, namely, a year and one day; and the only evidence of improvement is that Martigny had a house
573 on the land, and lived there 4 or 5 years; that he had a corn-field and garden, and had the place under cultivation until he sold it; but when he sold it is not stated, nor can I find any evidence thereof upon record in the proper offices of the county.

The cultivation therefore may not have been within the time required by the Spanish regulations, nor indeed is it certain that it was whilst the Spanish government possessed the country. We have no evidence of any Spanish survey, or of Martigny having been put in lawful possession, although the conditional grant was upwards of 20 years before the change of government. (See the evidence respecting this claim in the accompanying paper marked "Q.")

6th. We now come to the 6th and last claim confirmed and surveyed within the common.

Sophia Bolage, 150 arpens. Decision No. 279 of the late board of commissioners.

The order of the Spanish lieutenant-governor of the 3rd of June, 1796 is as follows: "In case the land asked for belongs to the King's domain, the surveyor of this jurisdiction shall put the petitioner in possession of the quantity of arpens she asks in the manner designated, in order to deliver to her the concession in form after the plat and certificate of survey made out," (see the accompanying paper marked "R.") Although more than seven years elapsed after this order before the transfer of the country, the petitioner was never put in possession by the surveyor-general, nor was then concession delivered in due form. The only evidence of cultivation is the affidavit of one individual before a justice of the peace in 1819, when no board of commissioners was sitting; this

individual testifying that corn and potatoes were planted and a
574 house built about 30 years before that date, which would be 7 years before the order of survey, and does not accord with the words of the petitioner, who only says she had the timber prepared for a house, and had begun a field, &c. We have no proof of either a survey, inhabitation, or cultivation, or any attempts thereat, after the conditional order of the lieutenant-governor.

From what is here shown with reference to these private claims, it must be evident they would not in the least affect the title of the inhabitants of Carondelet to common within the limits designated by the lieutenant-governor in his declaration of the 7th of December, 1796, if the claim for common was up for adjudication, but as the said claim for common was confirmed by the act of the 13th of June, 1812, the question as to the original merits or the extent thereof is not now a subject for consideration; all we have to do is to survey the claim as confirmed.

The solicitor further observes: "The title which the inhabitants have exhibited to the land south of the river Des Peres is the statement of Governor Trudeau (dated December 7th, 1796,) rejecting a petition of Gamache praying for a grant of lands below the village which states that no concession can be made in the direction of a line taken from the end of the field-lots of the village, and running parallel with the Mississippi and further down said river one hundred and fifty arpens, because the same is within the limits of the land reserved for the purpose of furnishing wood for the village." This was shown to the board of commissioners for adjusting titles and accompanied with proof that the inhabitants cut wood below the village for many years, &c., (2nd Am. State Papers, 549,) but the claim was rejected.

The declaration of the lieutenant-governor was not merely shown to the board of commissioners, as is above intimated, but it was placed
575 upon record on the 7th of June, 1808, in accordance with the laws of the United States, as I have before stated, and the original still remains on file in the recorder's office. I have examined the writing and signature of said lieutenant-governor in said original declaration, in connection with his writing and signature in the livre terrien, and other original documents now in the recorder's office, and I am fully satisfied as to the genuineness thereof; indeed, so perfectly do they compare with each other that there is no room to doubt.

It is true that the claim for common was rejected by a majority of the commissioners, as stated in the above quotation from the solicitor; that rejection, however, applies alike to the land north and south of the river Des Peres; it is equally true also that very soon after this rejection by the board the Congress of the United States confirmed the claim of the inhabitants of Carondelet to common; and this confirmation most certainly embraces all the land claimed upon record, and includes what lies south as well as that which lies north of the river Des Peres, within the bounds designated in the declaration of Governor Trudeau.

The solicitor observes, in continuation: It appears from a transcript of a survey made *February 25th, 1797, of a tract conceded to the inhabitants †September 7th, 1796, that the south line of the grant is bounded by the river Des Peres. This survey being made subsequent to the rejection of Gamache's petition, if it be, as is supposed, a survey of the commons, will overrule any inference to be drawn from the expressions used by the governor in refusing the prayer of Gamache.

*Dec. 21st, and certified 25th Dec., 1797.
†Dec. 7th, 1796.

The solicitor is wholly in error with respect to this transcript; it is not therefore to be wondered that he comes to a wrong conclusion. The
576 transcript of the survey is not, nor does it purport to be, the transcript of a complete survey, but the transcript of the survey of a single line or only a part of one of the boundary-lines of a claim, which is fully proven by the certificate of the surveyor-general, Soulard, recorded in the notice of claim. (See accompanying paper A.)

The solicitor continues: "My belief is that Brown's survey includes several thousand acres to which the village of Carondelet has no legal or equitable title." If Mr. Brown's survey contains several thousand acres to which the village of Carondelet has no legal or equitable title, then, unless it is decided that the quantity claimed controls the boundaries, or that the indication of the position of the line by Soulard's survey, on the 21st of December, 1797, and in the calls in the claims of Alvarez and Vallé is to be disregarded, their whole claim for common must fall to the ground, for its foundation is, with reference to the declaration of the lieutenant-governor, recorded and filed by them in the office of the United States recorder of land-titles, and to which all subsequent proceedings, including the act of Congress of the 13th of June, 1812, have distinct reference, either directly, or so plainly implied as not to be misunderstood. Prior to the passage of the said act, of the 13th of June, 1812, they had never claimed otherwise than as specified by Trudeau.

Then, if Congress did not mean to confirm their claim according to said specified boundaries, what other limits could have been intended?

The solicitor says, in conclusion, "The surveyor general should refer to the ancient maps and title-papers, in his and the recorder's offices, and from them ascertain what were the exterior lines of the just claims in 1803. It will be best to require copies of the papers, and a report from him."

577 There are no ancient maps in either this or the recorder's office which have any bearing on the subject, and the only ancient title-papers, which go to show what were the just bounds in 1803, are the declaration of the lieutenant-governor, of the 7th of December, 1796, the certificate of survey of that part of the western boundary which lies north of the river Des Peres, and the certificate of the surveyor-general relative to the cause of failure in completing the survey, all copied in the accompanying paper A, and the papers relative to the claims of Alvarez and Vallé, marked "S" and "V," and which will be noticed immediately following.

Having disposed of the subject to the extent designated in the outset of this communication, I will introduce some additional evidence that the title of the village of Carondelet to common, south of the river Des Peres, was officially recognized by the Spanish lieutenant-governor, and that such seemed to be the common understanding of the people of the country up to the change of government.

Although the first official statement which we have of the extent of the common of Carondelet is the declaration of the lieutenant-governor of the 7th of December, 1796, yet we have evidence that their title, south of the river Des Peres, was officially recognized before that date. You will see by the accompanying copy (marked "S") of Alvarez' petition for a grant of land, dated 15th November, 1796, that he asks for the "vacant land lying from the limits of the land of Carondelet to those of Mr. Reilhe, which he thinks will be about 6 arpens in front facing the river Des Peres by forty in depth." (This, the plat marked "U" and connected plat X will show you, is north of the river Des Peres.)

578 He further asks, "And on the opposite side of said river ten arpens wide, departing from the limits of Carondelet and ending at those of the lands of the domain." The lieutenant-governor, on the 18th of the same month, directs the surveyor-general to establish the petitioner upon the lands asked for, and subsequently thereto to execute the survey, &c., all of which was duly registered and recorded, and the claim was confirmed by the old board of commissioners. (See the accompanying copy of proceedings, marked "T," in which, however, the board has omitted, in reciting the outlines of the petition, to notice the expressions therein relative to the limits of Carondelet south of the river Des Peres.)

And after the declaration of the lieutenant-governor that certain lands had been reserved for the village and no concessions could be admitted between the river Mississippi and a line running parallel thereto 150 arpens from the field-lands, we have the petition of Charles Vallé, dated 11th of April, 1797, who states that two years before he had found an establishment on the river Gravois. Therefore, "he prays the lieutenant-governor to be pleased to concede to him 15 arpens wide by 40 deep, the limits thereof to be taken at the limit of the village of Carondelet," &c. The lieutenant-governor directs the "surveyor to put the petitioner in possession of 400 arpens of land at the place by him designated, so far as the land is there vacant, and the granting thereof is not prejudicial to anybody." (See the accompanying paper marked "V" which also shows that this grant was surveyed by the deputy surveyor, James Mackay, on the 17th of April, 1803, containing 413 arpens, being an excess of 13 arpens.) And on the 6th day of February, 1804, the executor of the estate of Vallé, sold 4 by 40 arpens of said land to John Colgin, and in the deed the land thus sold is described as being on the river Gravois,
579 and bounded on one side by the common of Carondelet.

This deed was executed in the presence of the lieutenant-governor Delassus, and by him approved and duly and properly witnessed and authenticated. The claim was confirmed to the extent of 400 arpens by the old board, to said John Colgin, under Charles Vallé, to be taken within the bounds of the 413 arpens Spanish survey. (See the accompanying paper marked "W.") The survey and its connections with the public surveys under the confirmation gives the position of this claim of Vallé with reference to the Carondelet common as represented by the accompanying plat X, on which it is numbered 2995; it does not exactly adjoin the line of the commons, as surveyed by Brown, there being a space intervening between them; but as the survey includes the establishment of Vallé on the Gravois and is upwards of 100 arpens southward of the southwest corner of the field-lands, and lies very near the Carondelet line, we can draw therefrom no other conclusion than one favorable to the claim of the village for common to the full extent of the 150 arpens from the line of the common field.

I enclose a plat, marked "X," of the survey of the common of Carondelet as retraced by Mr. Brown, and connected with the adjoining public and private surveys showing the position therein of the six private claims, to which the solicitor refers and also the surveys of Alvarez and Vallé just before referred to, and containing other information in a marginal note, not directly connected with the present enquiry, but which it is proper for your attention to be called, whether you decide in favor of or against the claim of the villagers.

From the facts here presented and the inferences which I have
580 drawn therefrom, you will see that my construction of the law is distinctly in favor of the village to the extent of 150 arpens from

the southwest corner of the field-lands, and were there no controlling circumstances I would not hesitate to run the west boundary as represented by the black dotted line *c d* on the plat X, which is 150 arpens parallel to the general course of the Mississippi; but when I take into consideration the operations of Soulard in running the line *c e* north of the river Des Peres and the Spanish calls for the limits and commons of Carondelet in the claims of Alvarez and Vallé, I am led to believe that it was the intention of the Spanish government to prolong the line *c e* to *a*, which is about parallel to the river for some distance; and that as the act of Congress had in view the carrying out and fulfilling this intention of the Spanish government, as claimed before the board, it ought now to be adhered to by adopting the line *c a*.

As no great injury can result from a short delay, I have thought best to submit this statement and the accompanying documents before ordering a survey, inasmuch as there seems to be a contrariety of opinion, and you have the controlling power in case of disagreement, and can understand the subject as well in the present condition as if a new survey was actually made.

I also enclose the communication, marked "Y," of the attorney employed by the board of trustees of the village, and the affidavits, numbered 1 to 7, to which he refers. The other papers which he calls for have already been enumerated and are properly referred to in the margin of the argument.

I am, very respectfully, sir, your obedt. servant.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

JAMES WHITCOMB, Esqr.,
Comm'r of the Gen'l Land-Office, City of Washington.

581 *A.—With preceding report.—Notice of claim of Lajoye.*

To the recorder of land-claims for the Territory of Louisiana:

Take notice that we, the inhabitants and settle's of the village of Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of lands situate adjoining said village, by virtue of a concession from Don Zenon Trudeau, lieutenant-governor of Upper Louisiana, dated the 7th December, 1796.

St. Louis 7th June, 1808.

On the part of said inhabitants,

BT. LAJOYE, FILS.

LOUIS + MENARD PERE.
la
marque.

(N. B.—The original of the following documents, No. 1 to 4, is in the French language. I give the translation as given in the surveyor-general's report, deeming that all sufficient.—F. M.)

No. 1.

To Don Zenon Trudeau, captain of the stationary regiment of Louisiana, lieutenant-governor, and commander-in-chief of the western part of Illinois:

The deplorable condition in which the village of Carondelet is about to fall and hereafter on account of the exportation of wood, [(*a*) induces

(*a*.) These five words have been introduced by the translator to supply the deficiency of the text.

the undersigned to have] the honor to state that after the petition he handed to you on the 5th of October last, fort he purpose of claiming the continuation of their lands, you told, that although you could not accede to his demand, you would, however, make your efforts to grant him 40 arpens above their parc. The village prays you to be willing to turn your attention to the fact that he has at present a great inducement to work, on account of this mill, and that it is his intention to sow with grain as much land as he is able to do. Therefore this petition is given in charge to Mr. Gamache to be delivered to you; and he hopes
582 that you will be pleas' to take into consideration his demand and the misery which threatens him, and grant to him the continuation of the lands, (common fields,) taking for his limit the limit of Mr. Constant, thence to the Mississippi and the river Des Peres, coming to the same village of Carondelet. He expects everything from your goodness, and believes *and believes* that you will grant his demand. He shall never cease to be thankful.

At the village of Carondelet, the 6th of December, 1796.

JOHN B. GAMACHE, his + mark.

No. 2.

The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet; and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the land of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower, cannot be admitted.

St. Louis, the 7th Dec., 1796.

ZENON TRUDEAU.

No. 3.

UPPER LOUISIANA, VILLAGE OF CARONDELET,
District of St. Louis of Illinois:

L. B. No. 139, fo. 27.

We, the undersigned, a surveyor commissioned by government, do certify to all to whom it shall appertain that, on this 21st of December, in virtue of the order transmitted by the lieutenant-governor to Mr. de Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of December, 1796, which line must be paral-
583 lel with those of Messrs. Ante. Reilhe and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands, which had been formerly surveyed by Mr. Pre. Chouteau, by virtue of an order from the lieutenant-governor. Having taken the bearing course of the same lands, I found that they ran S. 20° W. I followed this same course 23 arpens 3½ poles, at which distance I intersected the river Des Peres. The end of the line on the bank of the same river has been bounded with a stone having for witnesses two flint stones and one flattened lead bullet. The land of Mr. Alvarez must be distant from the same stone bound 24 feet in following the same line parallel. And in order that the said inhabitants may prove the same, I have delivered those presents.

St. Louis of Illinois, the 25th of Dec'r, 1797.

ANTOINE SOULARD.

No. 4.

I do certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure for them, or to cause to be measured by one of my deputies, a portion of land which was granted to them as a common by the lieut.-governor, Don Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himself to the village of Carondelet for that purpose. But at the moment he would set his instrument, he found it out of order; an inconvenience which did prevent the said survey to be then made; and the short space of time that was left to attend to it again has hindered me from being able to satisfy to the urgent calls made on me by the citizens of the settlement of Carondelet.

584 In faith whereof, I have delivered the presents to the interested, that they may serve the same wherever needed.

St. Louis, 18th Feb'y, 1806.

ANTOINE SOULARD,
Surveyor-General Territory Louisiana.

NOTE.—That part under No. 1 of this translation, from the imperfectness of the original, could be rendered in two versions; either as a collective petition of sundry inhabitants of Carondelet, asking for commonfields, and entrusting Gamache with the care of the handing of their document, or as a demand made by Gamache for himself. This last version has been adopted by the translator as the more conformable to the expressions used by Zenon Trudeau is his declaration upon the request, and the wording of the proceedings of the board of commissioners in the claim of the Carondelet common.

B.—*Proceedings of board of commissioners.*

WEDNESDAY, *June 15th*, 1808.

Board met pursuant to adjournment. Present, the Hon. John B. C. Lucas and Clement B. Penrose.

The inhabitants of Vide Poche, claiming 6,000 arpens of land as a common.

On application of the said inhabitants, the board order a survey of the land from the outer ends of their field-lots below the village to the Mississippi, a single line for the purpose of ascertaining the length

585 of said line in French arpens; survey to be returned this day 4 weeks.

Board adjourned till Monday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.

See minutes, book No. 3, pages 206 and 207.

MONDAY MORNING, *July 11th*, 1808.

Board met pursuant to adjournment.

Present, the Hon. John B. C. Lucas and Clement B. Penrose.

The inhabitants of the village of Vide Poche, claiming 6,000 arpens of land adjoining said village on the lower side as a common, district of St. Louis, produces to the board a notice of said claim to the recorder, dated 7th June, 1808; a petition from Jean Baptiste Gamache to Don Zenon Trudeau, lieutenant-governor, praying for a grant of land below said village, dated 6th Dec'r, 1796, and the decree of the said lieut. gov-

ernor thereon, stating that the land demanded is within the limits of land reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet, and that the demand which is made by Gamache cannot take place, nor no other concession be granted in the direction of a line taken from the end of the field-lots of the village, and running parallel with the Mississippi further down said river one hundred and fifty arpens, dated St. Louis, December 7th, 1796.

586 *Testimony perpetuated on the rough minutes June* 15 *&* 25, 1808.

AUGUSTE CHOUTEAU, sen'r, sworn, says that he knows the inhabitants of Vide Poche, since the year 1770, have made use of the land lying below the field-lots and village of Vide Poche along the Mississippi as their commons, and ever since that time have taken therefrom their fencing and fuel, but does not know the extent of their chain; that 25 years ago a man by the name of André built, from the wood of said common and on the same, a boat; that he commenced the building of another; complaint was then made by the inhabitants of said village to the lieut.-governor, who ordered said André to desist from his work, as the land belonged to said inhabitants; that about 25 years ago there was about 30 families of farming people who had no other pursuits; that since that time, until 1803, there continued to be about the same number of families; that the land which each of said inhabitants possess individually would not be sufficient to furnish them fuel, and that without said commons they would be obliged to desert said village; that the land held individually was purposely chosen for cultivation and without fire-wood.

Testimony perpetuated on on *rough minutes June* 24, 1808.

JEAN BAPTISTE PROVENCHERE, sworn, says that the village of Carondelet has been to his knowledge established at least 40 years ago; that the village contained 25 years ago about 40 families, all farmers; since about 35 or 36 years ago the said families have been using wood from the land now claimed, and ever since made use of the same as a common. In the year 1803 there was about 40 families; that on the land claimed individually by said families there is no fuel, and that they have no other place to get fuel or fencing from but said commons.

587 The board order a survey of the land from the outer end of the field-lots below the village to the Mississippi, a single line, for the purpose of ascertaining the length of said line in French arpens; survey to be returned this day four weeks.

Rough minutes, June 15, 1808.

The survey ordered by the board in the claim of the inhabitants of Vide Poche is this day returned, and said claim laid over for decision. The words "one hundred and fifty arpens" interlined before signed.

Board adjourned till Wednesday, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.

See minutes, book No. 3, pages 217 and 218.

THURSDAY, *January 2nd*, 1812.

Board met. Present, John B. Lucas, Clement B. Penrose, Frederick Bates, comm'rs.

Inhabitants of the village of Vide Poche or Carondelet, claiming 6,000 arpens of land as a commons. (See book No. 3, pages 206 and 217.)

It is the opinion of a majority of the board that this claim ought not to be granted. Clement B. Penrose, commissioner voting for a certification thereof, under the usages and customs of the Spanish government.

Board adjourned till Monday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

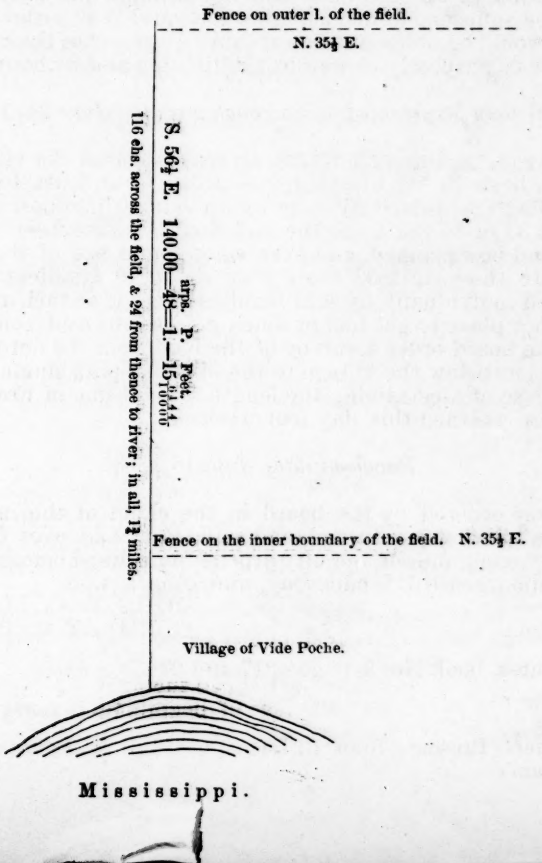
See minutes, book No. 5, pages 551, 552, and 553.

588 RECORDER'S OFFICE,
St. Louis, Missouri, 21st Dec., 1839.

The foregoing is truly transcribed from the minutes of the proceedings of the board of commissioners for ascertaining and adjusting the titles and claims to land as now appears of record in this office.

(Signed) F. R. CONWAY,
U. S. Recorder of Land-titles in the State of Missouri.

C.—*Report of survey.*



589 NOTE.—The inhabitants of Vide Poche show me what they said was the outer end of their field-lots, but could not find the N. W. corner. I therefore measured a line between J. Manard and L. Lajoy to the southern boundary on the course of S. 56½ E. 116 chains, and from thence 24 chains on the same course to the Mississippi. The S. W. corner could not be found either. The general course of the Mississippi for a considerable distance up and down from the point where my line intersected it is S. 42° W. The courses are according to the true meridian, and the admeasurement by such a chain as the law requires.

JUNE 17TH, 1808.—Pursuant to an order of the honorable board of commissioners under date of the 15th June, 1808, I surveyed and measured the distance from the outer end of the field-lots claimed by the inhabitants of Vide Poche to the Mississippi, and find the distance to be 48 French arpens, one French perch, and fifteen English feet and $\frac{6144}{10000}$ of a foot.

SILAS BENT,
Principal Deputy Surveyor.

RECORDER'S OFFICE,
St. Louis, Missouri, 24th Dec., 1839.

The above is a true copy taken from the original document on file in this office.

F. R. CONWAY,
U. S. Recorder of Land-titles in the State of Missouri.

(Here follows map, marked page 590.)

590 *Notes of survey Carondelet commons.*

Surveyed the commons of Carondelet.

Begin at a stone on the bank of the Missippippi River, N. E. corner; thence N. 82° W. 35.00 to b. o. 18 in. dia. 68 links, north side of the S. E. corner of Pierre Delor's 1½ arpens, on the east side of the common fields of Carondelet; thence with the field S. 15° W. 26.96; thence S. 21 W. 48.17 to the S. E. corner of Doctor Pall's land, and the S. E. do of the field of Carondelet; thence N. 56 W. 118.0 to the S. W. corner of the field; thence S. 36 W. 58.69 to the river Des Peres, 100 links wide, runs S. 48° E. 315 chains to Gravel Creek, 50 links wide, runs S. E. 437 chains 50 links to the S. W. corner of the commons; thence S. 54 E. 264 chs. 0 to a stone on the bank of the Mississippi River; thence up the river with the meanders of the same N. 10 E. 195 chains, N. 17 E. 38, N. 10 E. 25, N. 4 W. 51 chains, N. 20 E. 18 chains, N. 40 E. 23 chains to the mouth of river Depare, 2 ch. 50 links wide; thence 47 E. 7.50, N. 32 E. 58 chains 50 links, N. 7 W. 15.00, N. 22 E. 21.19 to the S. E. corner of the village of Carondelet; thence up the river N. 42 E. 54 chains 50 links, N. 35 E. 4.91, set stone N. E. corner of the village of Carondelet, which village is two lots deep of 300 French feet each, with a street 30 do. French wide.

The lots runs from the river N. 59 W. 53 chains 91 links to the north-east corner of the commons and place of beginning.

E. R.

SURVEYOR'S OFFICE,
St. Louis, 15*th April*, 1840.

The foregoing notes are correctly copied from the original field-notes, on file in this office, of the survey of the Carondelet commons, as executed by Elias Rector, deputy surveyor. The said notes are without date, but the survey was executed and the notes taken before the year 1817. They were to my knowledge on file in this office in the forepart of that year, and have always since that time been acted upon
591 as the official notes and survey of said common, as supposed to be confirmed by the act of Congress of the 13th of June, 1812. This plat is conformable to said notes. This survey having been executed before the survey of the adjoining public lands and the public surveys, and having been properly connected therewith, the adjoining fractions outside of the common were withheld from sale at the sale of the other lands in T. 3, 43, and 44 N., R. 6 E., and 43 N., R. 7 E.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

E.—*Letter McRee to Biddle.*

SURVEYOR'S OFFICE,
St. Louis, 25*th April*, 1829.

SIR: I have to acknowledge the receipt of your letter of the 23rd instant, informing me that, as I had expressed some doubts about complying with your application for a patent (survey) for the tract of land located by virtue of the New Madrid certificate (No. 338) in the name of Patterson, you have concluded to submit the matter to the decision of the Commissioner of the General Land-Office, and that before taking this step you wish to know whether there are any documents officially known to me which show that any claim for common has ever been made by the people of Carondelet; and, if so, whether any limits to their claims have ever been designated, or, in short, whether I have any other official knowledge on the subject, except what is contained in the act of Congress passed the 13th June, 1812.

592 In reply to these inquiries I have to state that the only information possessed by this office and on file at the date of your letter, concerning the Carondelet Commons, was the law of the 13th June, 1812, which confirms them as claimed, and a statement in the Registre d'Arpentage from which it appears that by virtue of an order from the lieut.-governor a line had been run from the S. W. corner of their lands, ("Aprendre de la derniere borne posseé a l'extremite de la profondeur de leur terres" meaning, I presume, the S. W. corner of their common fields,) 23 arpens 3 pc. ½ to the river Des Peres, on a course S. 28° W., parallel to the S. E. boundary-line of the claim of Alvarez, and distant from it 24 feet. This line purports to be a boundary of ground conceded to the inhabitants of Carondelet on the 7th December, 1796, and is therefore an intimation (however indefinite) of their claim in common to lands beyond and south of their village and common-field lots.

During the conversation I had with you and General Ashley on the subject of the New Madrid certificate, (No. 338,) I took it for granted that the location made under that certificate was within the reputed limits of the Carondelet commons, in which case I was (and still am) of the opinion that I could not with propriety cause it to be surveyed. For if there were any facts or any information whatever concerning

those commons which might enable me to determine their boundaries, &c., as claimed before the board of commissioners, and which were of record in the recorder's office, they constituted, in the contemplation of the law, a part of the official information within my reach, and therefore virtually in the possession of this office.

On receipt of your letter of the 23rd inst., I addressed a note to the recorder of land-titles, requesting him to furnish me with such extracts from the records of his office in relation to the Carondelet com-
593 mons as might enable me to ascertain their extent, boundaries, &c., and in answer to that application I have received from him some extracts from the proceedings of the board of commissioners, a copy of which is herewith enclosed for your information.

Permit me to call your attention to the declaration of the lt.-gov'r, Zenon Trudeau, (which you will find among these extracts,) on the petition of Jean Bte. Gamache for a tract of land, which petition is refused, for the express reason that the land requested "is comprised in that which has been reserved to furnish the wood necessary to the village of Carondelet;" and the lt.-gov'r goes on further to say that the demand "ne pent avoir lien, ausi que toutes concessions accordees dans la direction de la ligne puise au bout des terres au dit village et courant parallellement au Mississippy cent cinqte arpens plus bas."

Now, a line running from the S. W. corner of the common-field 150 arpens, (or rather the line which had been run from the S. W. corner of the common-fields to the river Des Peres,) if extended to 150 arpens in a direction parallel to the Mississippi River, will include the greater part of the tract located under the N. M. certificate No. 338.

The original merits of the claims to commons set up by the inhabitants of Carondelet, the validity of the evidence or genuineness of the documents adduced by them before the board of commissioners in support of their pretensions, were no doubt very proper subject for the consideration of Congress prior to the passage of the act of the 13th June, 1812, confirming the claim; but they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary-lines of the tract as claimed before the board of commissioners, provided
594 these boundaries can be established without interfering with any prior confirmed claim.

Respectfully, your m't ob't serv't,

WM. H. McREE.

CHARLES BIDDLE, Esq.,
St. Louis.

F.—*Letter: Langham to Brown.*

SURVEYOR'S OFFICE,
St. Louis, 10*th February*, 1834.

To JOS. C. BROWN,
Deputy Surveyor.

SIR: You will receive herewith a copy of the field-notes of the survey of the land claimed by the inhabitants of Carondelet as commons, but which is not sufficiently connected with the adjoining public and private surveys.

You are, therefore, hereby authorized to retrace the lines and re-establish the corners of said survey, and to connect it with the said adjoining surveys by establishing the proper corners at the intersection of he several lines thereof with the lines of the other claims and with the

lines of the public surveys, and measure and state in your field-notes the course and distance therefrom on the lines so intersected to the nearest corner outside of the commons.

When the corners described on the written copy of the field-notes of the surveys of the commons can be found and properly identified, you will run to them; when they cannot be so found and identified, you will run the proper course and distance or to the intersection of the natural or artificial boundary called for, viz, the Mississippi River and the common-fields and Alvarez claim, as the case may be.

595 If the s' western corner cannot be found, you will re-establish it at the intersection of the southern and western boundary-line of the survey.

You will consider the corporate authorities of Carondelet as the proper source of information or instruction in all cases when, under similar circumstances, an individual claimant would be applied to in the survey of his claim. You will therefore give the said authorities due notice of the time when you will commence operations. You will connect this survey with the survey of the commons of St. Louis, whether it interferes therewith or not.

For executing the surveying hereby authorized, there shall be paid to you, on account of the United States, at the rate of three dollars per mile for every mile and part of a mile of the boundary-line of the commons, and of the lines measured from the corners established at the intersection of the commons therewith to the nearest corner outside of the commons, provided your returns are made within sixty days from the date hereof, and that your surveys and returns are approved of by the United States surveyor in Illinois and Missouri.

You are also authorized to survey 35 arpens for Gabriel Constant, at the expense of the claimant, and connect it with the public lines at the expense of the United States, at the rate of three dollars per mile. This survey will be according to the enclosed transcript of confirmation, marked "A," and the original survey, marked B." The *the* claimants must show the corners at the extremities of the line *of the line* of their survey, which runs south 45° east. Said corners, as will be seen by the paper marked "B," are stones witnessed by the dross of iron. In all cases not otherwise herein specified you will be governed by the instruc-

596 tions issued to you on the 4th inst. for the survey of the claims by Gervais and Ortez, so far as said instructions are applicable thereto.

From, sir, very respectfully, your obed't servant,

E. T. LANGHAM.

(Here follows map, marked page 596.)

597 *Notes of survey No.* 2965.

Survey No. 2965.

Plat and description of the survey of the commons of Carondelet, as executed by Joseph C. Brown, deputy surveyor, from the 11th to the 17th of March, 1834, under instructions of the 10th of June *month*, containing 9,905.29 acres of land.

Beginning at two stones, a corner of this survey, and S. E. corner of the common-field of Carondelet, one of which stones is 15 inches long, three inches thick, and 12 inches broad; the other thicker and longer and 8 inches broad.

Thence N. 56¼ W. along the southern boundary of said common-fields, which is a line of this survey, 4 chains 50 links, an old stone, 42 chs. 50 lks. to a branch 10 links wide which runs southward 118 chs. 16 lks. to a stone, the S. W. corner of said common-fields, and corner of this survey, on the eastern boundary-line of Alvarez survey.

Thence S. 35½ W. with Alvarez line 60 chs. to the left bank of river Des Peres, 153 links wide, which runs eastward 120 chains; Saunders' door is 35 links westward, 193 chains 85 links; a spring branch 4 links wide runs eastward 201 chs. 36 lks., Alvarez S. E. corner-stone.

Thence N. 54° 20′ W. with Alvarez S. W. boundary-line 183 links to a post at the intersection of the old line of this survey with Alvarez S. W. boundary-line (which is 14 chs. 6 lks., S. 54° 20′ E. of the corner in said line to sections 13, 14, 23, and 24, T. 44 N., R. 6 E., of the 5th p. m.,) from which post a hickory 11 inches in diameter (marked as a sight-tree of old) bears N. 36 E. 39 links, and a white oak 25 inches in dia. bears N. 54 W., 52 links distant.

Thence S. 36° 20′ W. with the old line 19 chs. 81 links, to the line between secs. 23 and 24 in said township, a post corner to frac'l secs. 23 and 24, 24 chs. 31 links south of the corner of sects. 13, 14, 23,
598 and 24 aforesaid, from which post a black-jack 6 inches in diameter bears N. 38½ W. 55½ links, and a post-oak 15 inches in dia. bears N. 7½ E., 129 links distant, 20 chs. 71 links, an old stone in the line; 62 chs. 61 links a road leading to Jefferson Barracks, 87 chs. 21 links to a post on the line between sects. 23 and 26 in said township, corner to said fr. sects. 23 and 26, (226 links east of the qr. sec. corner,) from which post a red oak 9 inches in dia. bears N. 47¼ W. 98 links, and a red oak 14 in dia. bears S. 43½ W., 161 links distant, 133 chs. 71 links; Gravois Creek, 30 links wide, runs eastward 159 chs. 73 links, to a post on the line between sects. 26 and 27 in said township, corner to said sects. 26 and 27, 17 chs. 57 links, south of the qr. sec. corner, from which post a red oak 12 inches in dia. bears S. 29 E. 23 links, and a white oak 14 inches in dia. bears N. 81° E., 103 links distant, 187 chs., 16 links to a post on the line between sects. 27 and 34 in said township, corner to said sects. 27 and 34, (25 chs. 19 links east of the qr. sec. corner,) from which post a post-oak 25 inches in dia. bears N. 17° W. 24 links, and a red oak 13 inches in dia. bears S. 85 W., 87 links distant, 214 chs. 71 links to a road leading from Gravois to Jefferson Barracks, 214 chs. 81 links to the old S. W. corner of this survey, which is a cluster of stones, where also set a post, from which a post-oak 20 inches in dia. bears N. 71½ E. 66 links, and a white oak 16 inches in dia. bears S. 13 E. 88 links.

Thence S. 52½ E. 22 chs. 28 links to a post on the line between sects. 3 and 34, in T. 43 and 44 N., range 6 E. of the 5th p. m., for corner to said sects. 3 and 34, 33 chs. 62 links east of the corner to sects. 3, 4, 33, and 34 in said township, from which post a red oak 13 inches in dia. bears S. 38½ E. 6 links, and a post-oak 18 inches in dia. bears S. 55 W., 53 links distant, 82 chs. 80 links to a post on the line between sects. 2 and 3, in T. 43 N., R. 6 E. of the 5th p. m., for corner to said fr. sects.
599 3 and 2, 20 links north of the qr. sec. corner, from which post a red oak 14 in. dia. bears S. 47½ W. 70 links, and a red oak 12 in. dia. bears S. 6½ E., 74 links distant, 149 chs. 90 links, a post on the line between sections 2 and 11, in said township 43 N., R. 6 E., corner to said fr. sects. 2 and 11, (12 chs. 58 links E. of the qr. sec. corner,) from which post a red oak 14 inches in dia. bears S. 4 E. 69 links, and a hickory 10 inches in dia. bears S. 72½ W. 72 links distant.

Thence S. 53½ E. 35 chs. 10 links to a post on the line between sects.

11 and 12, in T. 43 N., R. 6 E., corner to said fr. sects. 11 and 12, (20 chs. 36 links north of the qr. sect. corner,) from which post a red oak 18 inches in dia. bears S. 37 W. 29 lks., and a red oak 20 inches in dia. bears S. 1½ E., 127 links distant, 132 chs. 70 links, to a post on the line between sects. 7 and 12, in T. 43 and 43 N., R. 6 and 7 E. of the 5th p. m., corner to said frac'l sects. 7 and 12, (9 chs. 71 links north of the corner of sects. 7, 12, 13, and 18 in said township and ranges,) from which post a post-oak 14 inches in dia. bears S. 18 W. 47 links, and a post-oak 12 inches in dia. bears S. 14½ E., 79 links distant, 148 chs. 24 links the S. E. corner of this survey on the brow of the hill at the river Mississippi, which corner is a large, curiously shaped stone leaning against a post-oak tree 14 inches in diameter.

Thence S. 84 E. 2 chs. 43 links to moderate high-water mark of the Mississippi; thence meander up the said river Mississippi N. 12 E. 31 chs., N. 15 chs., N. 6½ E. 17 chs., N. 17 E. 18 chs. 50 links, (at 9 chains on this line is the mouth of Martigny Creek,) N. 56 E. 3 chs., N. 18 E. 15 chs., N. 10½ E. 8 chs., N. 11¾ E. 47 chs. 34 links, N. 2½ E. 9 chs., N. 10 E. 31 chs., (the flag-staff at Jefferson Barracks bears N. 3° 20′ W.,) N. 19½ E. 52 chs. 38 links, (hence the flag-staff at Jefferson Barracks bears S. 87¼′ W.,) N. 10 E. 34 chs. 20 links, N. 1 W. 17 chs. 50 links, N. 5¾ E. 11 chs., N.
600 3½ E. 6 chains, N. 8¾ E. 5 chs. 36 links, N. 12 E. 9 chs., N. 24½ E. 11 chs., N. 31 E. 10 chains, N. 44 E. 9 chs., N. 47½ E. 9 chs. 50 links, N. 43½ E. 10 chs. 88 links, the mouth of river Des Peres, N. 61½ E. 2 chs. 54 links, across the mouth of the river Des Peres, N. 47 E. 9 chs., N. 33¾ E. 13 chs. 87 links, N. 30¼ E. 44 chs., N. 5 W. 13 chs. 50 links, N. 14 E. 11 chs., N. 30½ E. 20 chs., N. 38 E. 38 chs., N. 52 E. 8 chs. 72 links, N. 35 E., (3 chs. 58 links to the south edge of the street that passes by and north of Colburn's tavern, in the village of Carondelet,) in all this course 18 chs., N. 32¾ E. 41 chs. 50 links, N. 56 W. 78 links, to the N. E. corner of this survey, which is a post on the bank of the Mississippi River, from which a sycamore 10 inches in dia. bears S. 12 E. 24 links, and an elm 11 inches in dia. bears N. 46° E. 38 links distant. (The connection from this corner to the S. E. corner of the common of St. Louis is as follows, namely: S. 56 E. 78 links, N. 25¼ E. 11 chains 90 links.

From the said N. E. corner of this survey of the commons of Carondelet N. 82° W. 41 chs. 35 links to a stone 18 inches long 4 inches thick and 12 inches broad, and set 9 inches in the ground, with the edge east, the N. W. corner thereof in the front line of the common fields of the village of Carondelet, 5 chains 72 links southward of the intersection of said front line with the south boundary-line of St. Louis commons.

From said N. W. corner-stone of the Carondelet common S. 14° 40′ W., along the first line of said common fields, which is a line of this survey, at 70 links a stone, at 5 chs. 10 links a stone, at 9 chs. 48 links a stone, at 18 chs. 21 links a stone, at 26 chs. 96 links a stone—one of the corners of this survey; all these stones set of old.

Thence S. 26° 10′ W., along another line of the front of said
601 common-field, 17 chs. 47 links to a stone corner of this survey, and also one of the corners to the common fields aforesaid; said stone is 27 inches long 5 inches thick and 8 inches wide. Thence S. 36 W. 25 chs. 64 links to the beginning.

SURVEYOR'S OFFICE,
St. Louis, 29th July, 1834.

The foregoing plat and description of the survey of the commons of Carondelet, containing 9,905$\frac{29}{100}$ acres are conformable to the original field-notes on file in this office.

REC. 141—25

The said survey contains within its limits survey No. 2023 for 29.77 acres in the name of Gabriel Constant, under his confirmation, for 35 arpens, as represented on the plat; also survey No. 904, for 544 44/100 acres in the name of Julien Chouquette, under his confirmation for 640 arpens. Said survey for Chouquette is represented on the plat as accurately as practicable from the approximative data in the field-notes, which is the common call for the mouth of the river Des Peres, in the field-notes of Chouquette's survey and in the notes of the survey of the commons.

E. T. LANGHAM,
Surveyor of Public Lands in the States of Illinois and Missouri.

H.

This document consists of nothing more than Joseph C. Brown's account against the United States for the execution of the foregoing survey, and is therefore deemed useless to insert here.

602 I.—*Certificate of confirmation.*

(Duplicate.)

OFFICE OF THE RECORDER OF LAND-TITLES,
St. Louis, Missouri.

It is hereby certified that under the provisions of the first section of the act of Congress approved on the 13th day of June, 1812, entitled "An act making further provisions for settling the claims to lands in the Territory of Missouri," and of the several acts of Congress supplementary, or having reference thereto, approved on the 26th day of May, 1824 and on the 27th day of January, 1831, the inhabitants of the village of Carondelet, in the county of St. Louis in this State, have been confirmed in their claim in common to six thousand arpens of land, being in T. 43 and 44 N., range 6 and 7 E. of the 5th p. m.; the same having been regularly surveyed, as appears by a plat and field-notes thereof returned to this office by the surveyor of the lands of the United States in the States of Illinois and Missouri, certified by him on the 29th day of July, 1834, and duly numbered 2965, which accompanies this certificate, and to which I refer for a more full and complete description of the tract above mentioned, containing, according to said survey and certificate, nine thousand and nine hundred and five acres and twenty-nine hundredths of an acre.

In testimony whereof I have hereunto subscribed my name this 22nd day of August, A. D. 1834.

F. R. CONWAY,
Recorder of Land-Titles in the State of Missouri.

603 RECORDER'S OFFICE,
St. Louis, Missouri, 21st Dec., 1839.

The above is a true copy of the duplicate on file of the confirmation-certificate issued from this office to the inhabitants of the village of Carondelet.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

K.—*Notice of claim of Chouquette.*

To FREDERICK BATES, Esq.,
Recorder of Land-Titles:

Take notice that Julien Chouquette claims title to 640 arpens or acres

of land situated on the Mississippi River at the junction of the river Au Pere with the Mississippi, in the district of St. Louis, which said tract of land said Julien Chouquette actually improved, cultivated, and inhabited from the year 1798 until the year 1803, and on the 20th day of that year last mentioned by permission of the proper Spanish officer.

June 27th, 1808.

R. EASTON,
Agent for Claimant.

(See record-book D, page 327.)

Proceedings of board of com'rs.

TUESDAY, *Oct.* 25, 1808.

Board met. Present, the Hon. Clement B. Penrose, Frederick Bates.

604 Julien Chouquette claiming 640 arpens of land situate on the Mississippi River, at the junction of the river Au Pere with the Mississippi, district of St. Louis, produces to the board a notice of claim to the recorder dated 27th June, 1808.

LOUIS COURTOIS, sen'r, sworn, says that about 15 or 16 years ago claimant built a cabin on the tract claimed and raised a crop, and inhabited and cultivated the same for one year, and cultivated for 6 or 7 years.

Laid over for decision. Board adjourned.

CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes-book No. 3, pages 322, 324, 326.)

Claim of Chouquette confirmed.

MONDAY, *June 25th*, 1810.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, comm'rs.

Julien Chouquette claiming 640 arpens of land. (See book No. 3, page 324.) The board grant to Julien Chouquette the above tract of land, provided it does not exceed 640 arpens, under the 2nd section *on* a' act of Congress entitled "An act respecting claims to lands," and passed the 3rd March, 1807, and ordered that the same be surveyed and confirmed to his possession.

Board adjourned till to-morrow 3 o'clock p. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes No. 4, pages 404, 406, and 407.)

605 MONDAY, *June 10th*, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, comm'rs.

Cer. 904. Julien Chouquette. Book 4, 406. Survey at expense of claimant.

Board adjourned till to-morrow 8 o'clock a. m.]

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes-book No. 5, pages 176, 177, and 181.)

RECORDER'S OFFICE,
St. Louis, Missouri, 21st Dec., 1839.

The foregoing is truly transcribed from the books of record on file in this office.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

L.

Gabriel Constant claims 35 arpens of land, situate in the Territory of Louisiana, granted to him by Zenon Trudeau the 4th of Sept., 1795.

NOTE.—In this and in all other cases I omit the original French and Spanish, giving the translation as made for the report.

F. M.

606 *Claim of G. Constant.*

TO Don Zenon Trudeau, captain in the regiment of Louisiana, and lieutenant-governor of western part of Illinois:

SIR: With the greatest respect, Gabriel Constant, junior, has the honor to represent to you that being now of age to form by himself a little establishment which may afford him the means of subsisting from his own labor, and having his father's permission for the same, he wishes to obtain the concession of a tract of land of 35 arpens in superficies, or thereabouts, limited by a bend of the left and north bank of the small river Des Peres, at about one league from the village of Carondelet, the said land being commonly called "Belle Pointe;" which being considered, sir, may you be pleased to grant him the concession in form for the said land; favor that he hopes from your benevolent generosity.

GABRIEL CONSTANT, his + mark.

We, Zenon Trudeau, captain in the regiment of Louisiana, lieut.-governor of the western part of Illinois, after having seen the above demand of Gabriel Constant, junior, do concede to him, his heirs or legal representatives, thirty-five arpens of land, forming "Belle Pointe," (Favi Bend,) of the rive' Des Peres, bounded by its windings and by a straight line that cross' said tract, so as to include the totality of 35 arpens, on condition by the grantee to cause the land to be surveyed as soon as practicable, to set bounds thereto, and improve it within a year and one day, the same remaining liable to all public charges that it shall please his Majesty to impose thereon.

607 St. Louis, 4th of Sept., 1795.

ZENON TRUDEAU.

Survey of G. Constant's claim.

UPPER LOUISIANA,
District of St. Louis of Illinois:

We the undersigned, a surveyor commissioned by government, do certify to all those whom it may appertain, that on this day, 15th of April, 1796, we have, at the request of Mr. Gabriel Constant, junior, transported ourself on his land, lying about 3 miles distant from the village of Carondelet, and at a very little distance of the King's road leading to the Saline; the land of the said proprietor being circumscribed by a bend o the river Des Peres, commonly known by the name of the "Bell

Pointe," we have contented ourself to close said land with a line running S. 45° E., which line crosses said river, and is at its two extremities on the bank of the river Des Peres, bounded by a stone with witness of dross of iron.

The area comprises within the contour of the river at this place, and the line by us drawn may contain thirty four or six arpens in superficies or thereabouts, and in order that the owner may prove it, we have delivered the presents to be used by him whenever needful.

ANTOINE SOULARD.

Doc. M on next page, also relates to this claim of Constant. Why it was separately lettered I do not know.

608 M.—*Rejection of G. Constant's claim.*

FRIDAY, *November* 1, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederrick Bates, comm'rs.

Gabriel Constant, fils, claiming 35 arpens of land, situated Belle Pointe, near Carondelet. District of St. Louis produces a concession from Zenon Trudeau, L. G., dated the 14th September, 1795—a report of survey dated April 15th, 1796.

It is the opinion of the board that this claim ought not to be confirmed.

Board adjourned till to-morrow, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes-book No. 5, pages 386, 393, 394.)

Minutes of the recorder of land-titles, acting as commissioner under the act of Congress entitled "An act making further provision for settling the claims to land in the Territory of Missouri," passed the 13th day of June, 1812, and other acts subsequently passed.

FREDERICK BATES, *Commissioner.*

B 461.] ST. LOUIS, *December* 29, 1813.

609 Gabriel Constant, claiming 35 arpens of land, "Belle Pointe," near Carondelet, produces concession from Zenon Trudeau, lieut. governor, dated 14th Sept., 1795. Minutes 5, p. 393.

Pierre Villery, duly sworn, says that claimant cultivated the tract during nine consecutive years prior to 1810; that he inhabited the same during one winter, 8 or 9 years ago; this land is about 80 arpens from village Carondelet, where claimant resides. Confirmed.

(See Bates' minutes, pages 1, 120, 124.)

RECORDER'S OFFICE,
St. Louis, Missouri, 23rd Dec., 1839.

The foregoing is truly transcribed from the minutes of record on file in this office.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

N.—*Grant to Gabriel Cerré.*

Gabriel Cerré (by his legal representative) claiming 10 by 40 arps.

To Don Manuel Perez, captain of the regiment of infantry of Louisiana, lieutenant-governor, &c.:

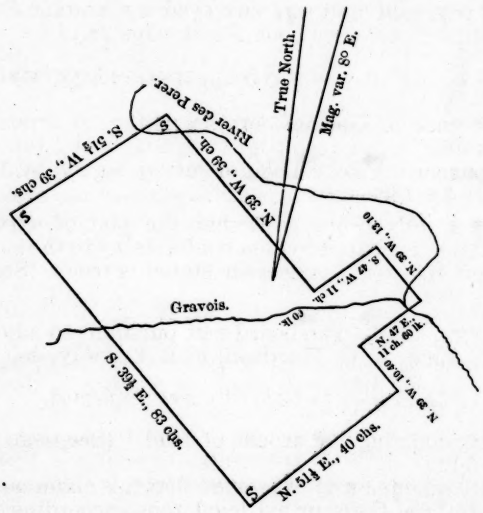
Having examined the contents of the memorial presented by Don Gabriel Cerré, residing in this town of St. Louis, and bearing date the 11th of March, 1789, I granted and do grant to him in fee, for him, his heirs, and assigns, a tract of land of ten arpens in front by forty in depth, situated on river Gravois, which empties in river Des Peres at the distance of 2 leagues from this town, and about 8 arpens from
610 the river Mississippi, bounded on every side by the King's domain, under condition to establish and improve the same in the term of one year from this date; on the contrary, to remain incorporated to the royal domain. The said land to be subject to the public charges and others which it may please his Majesty to impose.

Given in St. Louis, of Illinois, on the 15th day of March, 1789.

MANUEL PEREZ.

Truly translated from livre terrien book No. 4, p. 21, 22.
St. Louis, Feb'y 10th, 1833.

JULIUS DE MUN.



Surveyed a tract of land for Frederick Dent, as then claimant, of which the old bounds were found, or so many as to make the survey sufficiently certain. At all the corners marked with the letter S, I think were found old corner-stones.

The survey was may, I think, on the 13th February, 1822.

(Signed) JOS. C. BROWN.

MAY 4, 1833.

611 *Evidence with reference to minutes & records.*

Evidence with reference to minutes and records.

FEBRUARY 8TH, 1833.—F. R. Conway, esqr., appeared pursuant to adjournment, having been authorized by a resolution of the board of commissioners of the 1st of December last to receive evidence.

Gabriel Cerré, by his legal representative, Frederick Dent, claiming 10 arpens of lands in front by 40 arpens in depth. (See livre terrien No. 4, pages 21 and 22.)

For general notice see record-book F, page 146. For record of concession see book F, page 195. Produces a paper purporting to be a certified copy of a concession granted by Manuel Perez, lieut.-governor, dated March 15th, 1789.

PASCAL CERRÉ, being duly sworn, saith that he is acquainted with the tract mentioned in the above concession; that it was granted to his father by Manuel Perez in the year 1789; that in the beginning of June, 1789 or 1790—but he rather thinks it was in the year 1789—his father had two ploughs at work on said land, and plated a corn-field, which was not fenced in; that he had a cabin built and an orchard planted; that he, said deponent, planted said orchard with his own hands, and had it fenced in, and had grass mowed on said land, and had two hay-stacks made in the enclosure of said orchard; that his father remained in possession until the deponent's mother died, when a division of the property took place, and the said land fell into the deponent's hands; that now he has no kind of interest in said property, having sold the same to Abraham Gallatin; that said land was surveyed by Antoine Soulard under the Spanish authorities. (See book No. 6, page 98.)

MAY 22ND, 1833.—F. R. Conway, esq., appeared, pursuant to adjournment.

612 In the case of Gabriel Cerré, claiming 10 arpens of land in front by 40 in depth, (see page 98 of this book,) the claimant produces a paper purporting to be a plat of survey, signed by Jos. C. Brown, and dated Feb'y 13, 1822.

JOS. C. BROWN, duly sworn, says that the plat of survey presented by the claimant was executed by him conformably to the survey he made of said land, and that what is therein stated is true. (See book No. 6, page 169.)

NOVEMBER 8TH, 1833.—The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, F. R. Conway, comm'r.

Concession to Gabriel Cerré confirmed.

Gabriel Cerré, claiming 400 arpens of land. (See page 98 and 169 of this book No. 6.)

The board are unanimously of opinion that this claim ought to be confirmed to said Gabriel Cerré or his legal reps., according to the concession. (See p. 308, book No. 6.)

L. F. LINN.
F. R. CONWAY.
A. G. HARRISON.

RECORDER'S OFFICE,
St. Louis, Missouri, Nov'r 10, 1836.

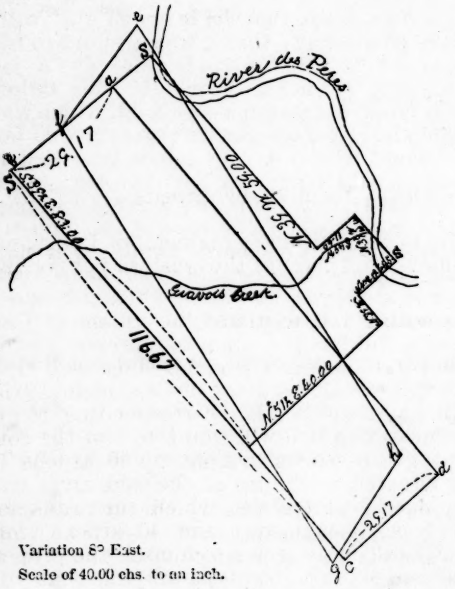
I certify that the foregoing mentioned and described tract of land of

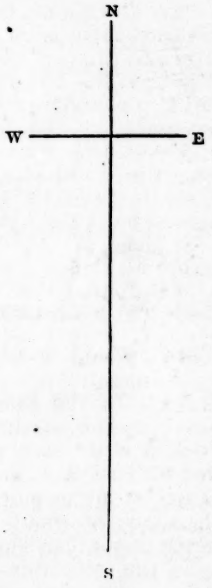
four hundred arpens, in the name of Gabriel Cerré, claimed by Frederick Dent, was recommended for confirmation by the late board of commissioners, decision No. 60, and that the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the
613 State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
Recorder of Land-Titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Pub. Lands, St. Louis, Missouri.

O.





SURVEYOR'S OFFICE,
St. Louis, 15th April, 1840.

The above lines drawn with black ink represent the plat of the
614 survey of 400 arpens of land as executed by Jos. C. Brown, deputy surveyor, in his private capacity, in the year 1822, certified by him in 1833, and presented to the late board of commissioners and reported with their decision, No. 60. The most northern, the most southern, and the most western corner of the main body of this survey, and the most eastern corner of the adjection, are the corners marked with the letter "S," in copy furnished this office by the recorder of land-titles, and are therefore those at which Mr. Brown thinks old corner-stones were found.

To show the departure of this plat from the requirements of the concession, (10 by 40 arpens,) I have dotted above with black ink (*ab*, *bc*, *cd*, and *da*) a tract of that form, conforming to the S. W., and a part of N. W. boundary-lines of Mr. Brown's survey. I have, also, as near as practicable, laid down the survey by red dotted lines (*ef*, *fg*, *gh*, and *he*) as

run out under the confirmation, and numbered 3067 on the connected plat.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

P.

Pre. Delor de Treget to Frederick Bates, esq., recorder of land-claims:

SIR: Please to take notice that I claim 400 arpens of land, as per the within concession. St. Louis, Nov. 27, 1812.

his
PIERRE DELOR + DE TREGET.
mark.

Witness:
M. P. LEDUC.
See book F, p. 96.

615 *Claim of Pierre Delor.*

No. 121. Pierre Delor, claiming 400 arpens.

To Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant-general and commander-in-chief of the western part of Illinois:

Pierre Delor, captain commanding the militia of the village of Carondelet, supplicates very humbly, and has the honor to represent to you that he would wish to make an establishment near the river aux Gravois, on the road leading from St. Louis et le village de Carondelet to the Saline of the Meramec, and having found a piece corresponding to his wishes, he claims of your goodness that you will grant to him the concession of the said place, leaving ten arpens in front by 40 arpens in depth; the said tract being situated at a turn of the said river aux Gravois, on the side of the village of Carondelet, which turn runs for the space of about 10 arpens from east to west, and 40 arpens from north to south. The petitioner, desiring to secure to himself the property of the said tract, has recourse to your goodness, praying that you will be pleased to grant the concession, and secure to him the property of the same, by giving him titles in due form, in order that he may with security make thereon the improvements required, according to custom, as he wishes to begin to work as soon as you will please grant him the concession.

This considered, you may be pleased, sir, to grant to him the aforesaid concession of 10 arpens in front by 40 arpens in depth, such as it is here above designated.

The petitioner shall never cease to pray Heaven for your conservation.

his
PIERRE + DELOR.
mark.

ST. LOUIS, 4*th Dec.*, 1796.

616 ST. LOUIS, *Dec. 6th*, 1796.

The surveyor of this jurisdiction shall put Mr. Delor de Treget in possession of the land which he acks, in the place and in the shape

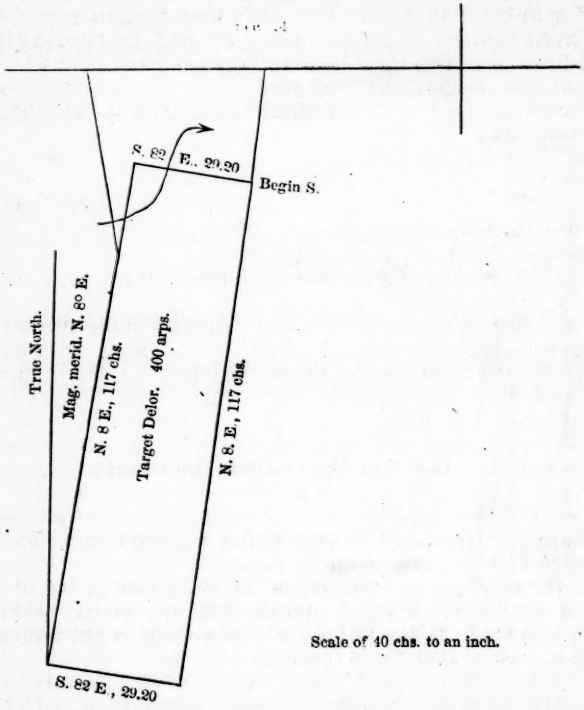
designated, provided it belongs to the King's domain, and is not prejudicial to any other concession heretofore granted.

ZENON TRUDEAU.

ST. LOUIS, *May* 24, 1833.

Truly translated.

JULIUS DE MUN.



By request, surveyed for Target Delor, according to his showing, an old concession of 10 by 40 arpens: Beginning at the northeast corner, thence N. 82 W. 18 ch's 50 links to the creek, 29 ch's 20 links set post, the N. W. corner; thence S. 8 W. 4 chains to the creek, 117 chains to the S. W. corner; thence S. 82 E. 29 ch's 20 links to a post, the S. E. corner; thence N. 8 E. 117 ch's to the beginning, and for connections
617 with public lines; thence N. 32 E. 22 ch's to a q'r sec. corner in the S. boundary of sec. 24, T. 44 N. and R. 6 east.

JOS. C. BROWN.

Proceedings of board of comm'rs on claim of Pierre Delor.

Evidence with reference to minutes and records, April 12th, 1833.

The board met pursuant to adjournment. Present, F. R. Conway, A. G. Harrison, commissioners. Pierre Delor, claiming 10 arpens of

land in front by 40 arpens in depth on the river aux Gravois, a special location, (see record-book F, page 96, Bates' decisions, No. 5, p. 102,) produces a paper purporting to be an original concession from Zenon Trudeau, dated 6th December, 1796; also a plat of survey, dated May, 1821, by Jos. C. Brown.

JOHN BOLI, duly sworn, says, that he was present when Jos. C. Brown surveyed a tract of land for Pierre Delor, on river aux Gravois; that near the main road he was several times shown a tree said to be the corner of said land, as before surveyed, and that in running the lines he saw trees marked with old blazes, of said Delor and others; that these old lines were run by Bouvet, who was commissioned surveyor at the date of the concession; that said Delor was a Spanish officer, and acted as commandant at his father's decease, and he (the deponent) served under him.

(See book No. 6, page 156.)

APRIL, 17*th*, 1833.

The board met pursuant to adjournment. Present, A. G. Har-
618 rison, F. R. Conway, commissioners.

In the case of Pierre Delor, claiming 10 by 40 arpens of land. (See p. 154, of this book.)

JOSEPH C. BROWN, duly sworn, says, that he made the survey of the land above-mentioned; that John Boli was along, with several other neighbors, for the purpose, he thinks, of showing the land as claimed by the proprietor.

(See book No. 6, p. 156.)

Claim of Pierre Delor confirmed.

NOV. 13, 1833.

The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

Pierre Delor, claiming 400 arpens of land, (see p. 156 of this book.) The board are unanimously of opinion that the claim ought to be confirmed to the said Pierre Delor, or to his legal reps., according to the concession. (See book No. 6, p. 325.)

A. G. HARRISON.
L. F. LINN.
F. R. CONWAY.

RECORDER'S OFFICE,
St. Louis, Missouri, 19th Dec., 1839.

I certify that the foregoing mentioned and described claim to a tract of land of 400 arpens, in the name of Pierre Delor or his legal reps., was recommended for confirmation by the late board of commissioners, Decision No. 121, and that the same is duly confirmed by the act of Congress entitled an "Act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th day of July, 1836.

619 F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

To WILLIAM MILBURN, Esq.,
Surveyor-Gen'l of Ills. and Mo., St. Louis.

Q.—*Grant to D. B. Martigny.*

No. 170. Jean Baptiste Martigny, claiming 12 arpens front.

Don Francisco Cruzat, lieut.-col. of infantry, by brevet commander-in-chief and lieut.-governor of this western part and district of Illinois:

Having taken cognizance of the memorial dated April 23rd of this current year, presented by Don Juan Baptiste Martigny, captain of the militia in this town of St. Louis, I have granted to the s d Don Juan Baptiste Martigny, in fee-simple, for him, his heirs, or others who may represent his right, the twelve arpens, from hill to hill, in front, in order that he may raise cattle, as he solicits, on the borders of the Mississippi, on the river called Decadre, on condition to improve the plantation he asks for, and to be liable to public taxes and others which it may please his Majesty to impose, and on the contrary the land shall be incorporated to the royal domain.

Given in St. Louis, April 25th, 1783.

FRANCISCO CRUZAT.

Truly translated from livre terrien No. 4, p. 7.
St. Louis, August 3rd, 1833.

JULIUS DE MUN.

620 *Evidence with reference to minutes and records.*

JULY 8TH, 1833.

L. F. Linn, esq., appeared pursuant to adjournment.

Jean Baptiste Martigny, by his legal representatives, claiming 12 arpens in front (a special location) by the ordinary depth. (See Book F, p. 191; recorder's minutes, page 151.)

Livre terrien No. 4, p. 7.

PETER CHARTEAU, senr., duly sworn, says that said Martigny had a house on said land, and lived there 4 or 5 years; that he had a corn-field and garden, and had the place under cultivation till he sold it. (See minutes, No. 6, p. 219.)

Claim of Martigny confirmed.

OCT. 14, 1834.

The board met pursuant to adjournment. Present, F. R. Conway, J. S. Mayfield, and J. H. Relfe, comm'rs.

Jean Baptiste Martigny, claiming 12 arpens of land in front. (See Book No. 6, p. 219.)

The board are unanimously of opinion that this claim ought to be confirmed to the said Jean Baptiste Martigny, or to his legal reps., according to the concession. (See book No. 7. p. 37.)

JAMES S. MAYFIELD.
JAMES H. RELFE.
F. R. CONWAY.

RECORDER'S OFFICE,
St. Louis, Missouri, May 1st, 1837.

621 I certify that the foregoing mentioned and described tract of land of 12 arpens front, in the name of Jean Baptiste Martigny, was recommended for confirmation by the late board of commis-

sioners, decision No. 170, and that the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Public Lands, St. Louis, Missouri.

R.—*Claim of Sophia Bolage.*

No. 279. Sophia Bolage, claiming 150 arpens.

To Don Zenon Trudeau, lieut.-col. of the stationary regiment of Louisiana, lieut.-governor and commander-in-chief of the western part of Illinois:

SIR: Sophia Bolage, residing in the village of Carondelet, has the honor to represent that she had began to clear a piece of land in order to build a house and make a plantation on a tract situated on river aux Gravois, between the Marameck and the village of St. Louis; that she had all the timber prepared for a house, and even began a field, but having been frighte'd by the reports which have gone abroad of the bad intention of the Indians, she then retired with her family to the
622 village of Carondelet. Now, she would wish to return and settle with her family upon the said plantation; therefore she claims of your goodness that you please grant her a concession of 10 arpens in front, at the distance of half a league from the junction of said river aux Gravois with river Des Peres; the said 10 arpens ascending in a straight line five arpens on each side the said river aux Gravois the length of 15 arpens, which will make the quantity of one hundred and fifty arpens of land in superfices. She only waits for your decision in order to go and settle herself on said place, and to work thereon with security, and continue the improvements already begun. This being considered, may it please you, sir, to grant to the petitioner at the distance of half a league from the said river aux Gravois, the quantity of ten arpens, five on each side of said river, by 15 in depth, in ascending the said river in a straight line. The petitioner shall never cease to pray for your conervation.

St. Louis, 28th June, 1796.

her
SOPHIA + BOLAGE,
mark.
Not knowing how to sign.

ST. LOUIS, *June 3rd*, 1796.

In case that the lands asked for belong to the King's domain, the surveyor of this jurisdiction shall put the petitioner in possession of the quantity of arpens she asks in the manner designated, in order to deliver to her the concession in form, after the plat and certificate of survey are made out.

TRUDEAU.

ST. LOUIS, *May 25th*, 1835.

Truly translated from the original filed before the board of commissioners.

JULIUS DE MUN, *T. B. C.*

623 *Evidence with reference to minutes and records.*

MAY 14, 1835.—The board met pursuant to adjournment. Present, F. R. Conway, J. H. Relfe, commissioners.

Sophia Bolage, claiming 150 arpens of land situate on river Gravois. (See record-book E, p. 327; Bates' decisions, p. 91.)

Produces a paper purporting to be an original concession from Zenon Trudeau, dated 3rd June, 1796; also the deposition of Philip Fine, taken the 18th August, 1819, before Joseph Charless, J. P.

M. P. LEDUC, duly sworn, says that the signature to the concession or order of survey is in the proper handwriting of the said Trudeau.

TERRITORY OF MISSOURI,
County of St. Louis:

PHILIP FINE, of the township of St. Louis, in said county, being duly sworn, upon his oath declares and says, that he well knows the tract described in the annexed petition of Sophia Bolage, and has known it for at least 40 years past; and that Sophia Bolage, about thirty years ago, opened the ground, planted corn and potatoes, and built a house on said tract.

his
PHILIP + FINE.
mark.

Sworn to and subscribed this 13th day of August, 1819, before me, a justice of the peace in and for the county aforesaid. (See book No. 7, p. 152.)

JOSEPH CHARLESS, *J. P.*

624 *Claim of Sophia Bolage confirmed.*

JUNE 10TH, 1835.—To board met pursuant to adjournment. Present, J. H. Relfe, F. R. Conway, commissioners.

Sophia Bolage, claiming 1500 arpens of land. (See book No. 7, p. 152.)

The board are of opinion that this claim ought to be confirmed to the said Sophia Bolage, or to her legal reps., provided the land belonged to the domain at the date of the concession. (See book No. 7, page 176.)

JAMES H. RELFE.
F. R. CONWAY.

I have examined the transcript of the above claim and concur in the decision.

F. H. MARTIN.

RECORDER'S OFFICE,
St. Louis, Missouri, March 20th, 1837.

I certify that the foregoing mentioned and described tract of land of 150 arpens, in the name of Sophia Bolage, now claimed by her legal representatives, was recommended for confirmation by the late board of commissioners, decision No. 279, and the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Pub. Lands, St. Louis, Missouri.

625 S.—*Claim of Eugene Alvarez.*

Eugene Alvarez. Claim to hold 640 arpens of said land situate on the river Des Peres, in the district of St. Louis, by virtue of concession to him granted by Zenon Trudeau, on the 18th day of Nov., 1796, and recorded on a book *November* 1, folio 28 and 29, lodged in the office of the recorder of land-claims, by virtue of having actually inhabited and cultivated said concession. (See book C, p. 508.)

EUGE. ALVAREZ.

ST. LOUIS, *August* 12, 1807.

STATEMENT.

Eugene Alvarez claims 640 arpens of land situate on river Des Peres, district of St. Louis, by virtue of a concession granted to him by Zenon Trudeau. Nov. 18, 1796.

PETITION.

To the Lieutenant-Governor:

Eugene Alvarez, a citizen residing in the town of St. Louis, with due respect and in the best form that may be, has the honor to state that, wishing to establish an habitation for the purpose of raising cattle and occupying himself in agriculture, he wants to have the quantity of land needed for his projects.

Therefore, he humbly supplicates your lordship to grant to him in fee-simple the vacant land lying from the limits of the land of Carondelet to those of Mr. Reilhe, which he thinks will be about six arpens in front, facing the river Des Peres, by 40 in depth, and on the opposite side of said river ten arpens wide departing from the same limits of Carondelet, and ending at the lands of the domain. The whole
626 not to be prejudicial to anybody, said land to remain subject to all the charges decreed by law. Favor that the petitioner hopes to deserve from your justice.

St. Louis of Illinois, 15th of November, 1796.

EUGENE ALVAREZ.

Decree of concession to Alvarez.

DECREE OF CONCESSION.

ST. LOUIS, 18*th Nov.*, 1796.

The surveyor, Don Ante. Soulard, shall establish the petitioner upon the land asked for, and subsequently thereto he shall execute the survey of said land, in order that the title in form of concession thereof may be expedited.

ZENON TRUDEAU.

Registered in the book of petitions, decrees, and titles of concessions No. 1, fos. 28 and 29.

SOULARD.

T.

WEDNESDAY, *August* 8*th*, 1810.—Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, comm'rs.

On special application of Eugene Alvarez, and he having shown sufficient cause, he is permitted to introduce testimony in the following claim, to wit:

Eugene Alvarez, claiming 640 arpens of land situate on the river Des Peres, in the district of St. Louis, produces to the board a concession from Don Zenon Trudeau, lieut.-governor, to the said Alvarez,
627 dated the 18th November, 1796, for a certain space between the establishment of Carondelet and that of Mr. Reyhe, estimated to be six arpens in front and 40 arpens in depth, and on the opposite of the river 10 arpens in front and forty in depth.

JEAN BAPTISTE CHATILLON, being duly sworn, says that in the year 1798 or 1799 he (witness) built a cabin and enclosed about three arpens of land for the claimant, and that claimant sowed tobacco-seed in the month of April of the same year on the land claimed.

ALEXANDER GRIMEAU, being also duly sworn, says that claimant inhabited and cultivated the land claimed in 1798 or 1799; that he, the deponent, was sent at that time by the lieut.-governor, Zenon Trudeau, to inform said Alvarez, who was then inhabiting said land, that he had been appointed keeper of the public stores, and required him to remove to St. Louis and attend to his said office. The board order that this claim be surveyed conformably to the above-mentioned concession, and that the survey be returned within 15 days from this date.

Board adjourned till to-morrow, 3 o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes, book No. 4, pages 458 and 459.)

Cer. 1339.—*Claim of Alvarez confirmed.*

MONDAY, *January 6th*, 1812.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Eugene Alvarez. (See book No. 4, page 458.)

The board confirm to Eugenio Alvarez four hundred and sixty-
628 two acres one hundred and twenty-nine perches of land, as described in a plat of survey returned by Silas Bent, principal deputy surveyor, dated 22nd and 23rd of November, 1811, on file with the recorder.

Board adjourned till Thursday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes, book No. 5, pages 553, 554, and 555.)

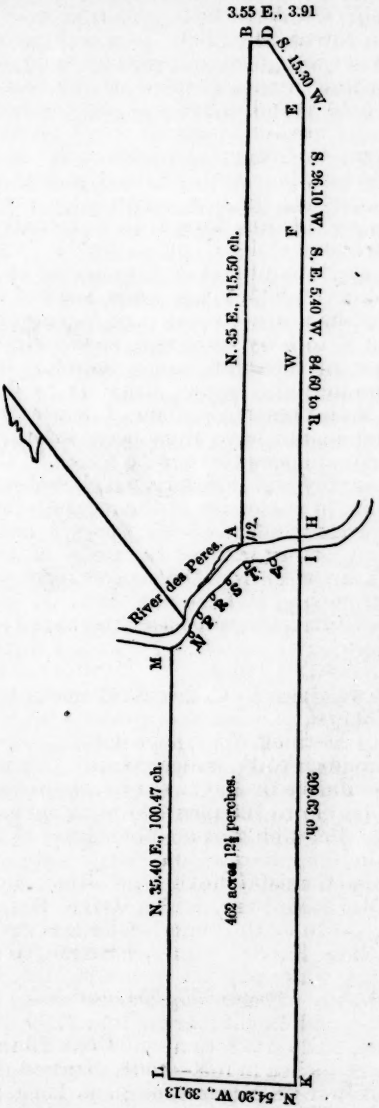
RECORDER'S OFFICE,
St. Louis, Missouri, 23rd Dec., 1839.

The foregoing is truly transcribed from the minutes of the proceedings of the board of commissioners for ascertaining and adjusting the titles and claims to lands, as now appears of record in this office.

F. R. CONWAY,
U. S. Recorder of Land-Titles in the State of Missou

U.

Eugene Alvarez, district of St. Louis.



629 *Notes of survey of E. Alvarez' claim.*

Eugenio Alvarez: Surveyed as represented by the above plat, situate

in the district of St. Louis, Territory of Louisiana, on river Des Peres, (as said river is represented therein,) which river averages 110 $\frac{50}{100}$ links wide, the survey being bounded from M to V by the southern shore thereof, (the land on the opposite and northern shore said to be claimed under right of Antoine Reylh;) from A to B by the aforesaid land claimed under right of Ant. Reylh; from B to D by public lands, or claimant unknown; from D to E to F to W by common-field lands, of the village of Carondelet, (which common-field lands are divided amongst the several individuals possessing the same by known and marked boundaries, held as individual and not common property, most of which lands it is said have not been recorded or claimed before the board of commissioners, tho' they have been cultivated and possessed by the several individuals, it is said. Since the first settlement of the country, the particulars from the best information are therefore stated without stating whether this line from D to W bounds on private claims (when in fact they are not claimed) or on public lands; from W to K by lands claimed by the inhabitants of Carondelet as a common property, the boundary-line of which has been marked apparently about 14 or 15 years ago, to the northern bank of the river Des Peres at H, and no further; from K to L by land said to belong to the heirs of a widow Boly, tho' no claim recorded, and is therefore in the same situation of the lands bounding this survey from D to W, (may be public lands;) from L to M I presumed when I made the survey to be bounded by public lands, but have since been informed that Mr. Sarpy has a claim of considerable size there, with which (if there is such claim) I now presume this survey will interfere, which fact may be ascertained by those who are in possession of the record (if any) of Mr. Sarpy's
630 survey; the garret-window of Mr. Sarpy's mill being N. 38° 30 W. from the sycamore witness to corner M, and not more than 10 chains distant (at farthest) from that corner. Suspecting no interference, having no instruments, and the mill being on the opposite side of the river, the exact distance was not measured to the mill and the course taken without any particular motive. No former lines were discovered by me south of the river Des Peres.

The above survey was begun on the 22nd and finished on the 23rd day of November, 1811, in pursuance of the several orders of the board of commissioners to that effect; the compass adjusted to the true meridian; the chain (as nearly as practicable) carried horizontal by George Schoultz and Jacob Brehnet, sworn chain-carriers; plat'ed to a scale of 40 chains (equal to 160 perches) to an inch.

Field-notes, to wit: Beginning at a stone corner at the root of a white oak tree 27 inches in dia., marked on the E. side *ll* A, being on the bank of a spring branch and 87 links N. E. from the river Des Peres, at the place called Morgan's Ford, which stone and white oak tree (to wit) at corner A is said to be the boundary-line of a tract of land originally claimed by Ante. Reyth; witness-stations, to wit, a large spring N. 46° 15′ W. 97 links, white oak 28 inches in dia., N. 17 E. 85 links; thence from the said place of beginning (as described) N. 35 E. 15.00 links to a stone on the aforesaid Reyhl marked line 25.00 links to the bottom of a deep *cinque*-hole, 26.20 links to a white oak 23 inches in dia., 34.64 links to a white oak 21 inches in dia.—to this station the land is not rich, and very much broken with *cinque*-holes; has been tolerably well timbered with white oak, black oak, post-oak, black jack, and hickory,
631 a few of which yet remains—42.50 links to a white oak 41 inches in dia., 69.76 to the top of a ridge timbered with a few scattering shrubby hickorys and post-oaks; land of tolerable second-rate quality,

(admitting three qualities of high land)—to this station the aforesaid line of Reilh is remarkably well marked, in part with stones and on trees where they are near the line, which marks on trees appear to have been made at least 15 years ago—115.50 links to a stone corner at B, (Reilh's marked line found until within 40.00 links of this corner, I; witness-trees, a persimmon-tree 2½ inches in dia., S. 41 E. 1.00 links, marked on S. side E A, black jack 10 inches in dia., N. 45° 40′ E. 170 links; land inferior to 2nd quality; timber, a few scattering shrubby post-oaks, black jacks, and hickorys; thence S. 55° E. 3.91 to a stone corner at D, on rear line of common-field lands of Carondelet Village, being on the rear part of the lot of Gabriel Constant, sen'r, in said field; witness-trees, the same aforesaid persimmon-tree 2½ inches in dia., N. 68.30 W. 2.05 links, and the same last aforesaid black jack, 10 inches in dia., N. 33.15 W. 3.70 links; thence S. 15.30 W. with the rear line of Carondelet common-fields 7.47 links to a stone, 11.60 links to a stone, 15.75 links to a stone corner at E; thence S. 26.10 W. 17.50 links to a stone corner at F; thence S. 35.40 W. (still with the rear line of said fields as marked with stones) 26.10 to a stone at W—from D to W there is but very few scattering shrubs of timber; land is tolerably 2nd quality of high land; (it is said one arpent and a half southward of this station, at W, is a part of the common-field lands, and owned by a widow Roundah, the rear southward corner of which is not to be found, from the place of which corner, or
632 where it ought to be, commen*mence*s a tract of land claimed by the inhabitants of Carondelet as a common property)—84.60 links to a stone at H, on the bank of the river Des Peres; land *h*ightly timbered, with remnant of black oak, white oak, post-oak, black jack, and hickory; not rich, and broken with *cinques*, in part, and in part inclinable to be wet and spouty; 89.60 links to a stone now set on the south bank of the river Des Peres at I, the river being 109 links wide; 96.69 links to top of first rising ground; timber from river to this station, Spanish oak, elm, lynn, ash, and hickory; 209.63 links to a stone corner at K, about 200 links N. of a small fork of Grave Creek; witness-trees, white oak 30 inches in dia., S. 57 E. 32 links, another white oak 30 inches in dia., N. 37.10 W. 80 links from last station on top of fine rising ground S. of river; a distance of 14 chains towards this course is open, level, and tolerably rich high-land prairie, the land then becomes poor and somewhat broken with drains and *cinques*, with some few scattering shrubs of white oak, hickory, and black jack, and continues so until within 10.00 links of the present corner at K, which last 10.00 links is some better timber, Spanish oak, black oak, white oak, &c.; the drains emptying into Grave Creek. The inhabitants of Carondelet claim to this line as the boundary of their common; no ancient marks like a line has been found any further than to H. Their claim extends, it is said, considerably further to the southward (in the direction of this line) than this corner at K. Thence N. 45.20 W. 15.20 links to a white oak 10 inches in dia., 29.13 links to a stone corner at L; witness-trees, white oak 17 inches in dia., S. 52 W. 31 links, black oak 9 inches in dia., marked
633 E A., N. 43 E. 151 links; land on this line not rich; lightly timbered with white oak, black oak, black jack, post-oak, and hickory.

Thence N. 35.40 E. 170 links, to hickory 4 inches in dia., 29.00 links, to a stone on S. hillside, 39.79 links, to hickory 4 inches in dia., 51.50 links to the top of a ridge, 90.00 to a stone on a flat of high land, 100.47 links to stone corner at M on the S. bank of the river Des Peres, witness-trees, blue ash 9 inches in dia., N. 14 E. 34 links, sycamore 18 inches in dia., N. 65 E. 31 links. The land from L to M is mostly poor and

broken with *cinques* and drains, timbered with a few shrubby post-oaks, black jack, and hickorys. Thence down the meanders of the river Des Peres, on the S. E. bank thereof, as follows: S. 45.20 E. 8.20 links to N, N. 70 E. 3.00 links to P, N. 18 E. 8.50 links to R, N. 34 E. 7.00 links to S, S. 63 E. 6.00 links to T, N. 85.40 E. 7.00 links to a double elm at V, witness-tree, sycamore 36 inches in dia., S. 1.30 E. 20 links, marked F A; thence N. 35 E. 189 links to the white oak and stone beginning-corner at A, crossing the river Des Peres, which is 112 links wide.

The river as meandered is tolerably rich land, bottom narrow, perhaps in no place exceeding six chains wide, timbered with sycamore, Spanish oaks, ash, elm, lynn, red bud, &c.; undergrowth, briers, and grape-vines.

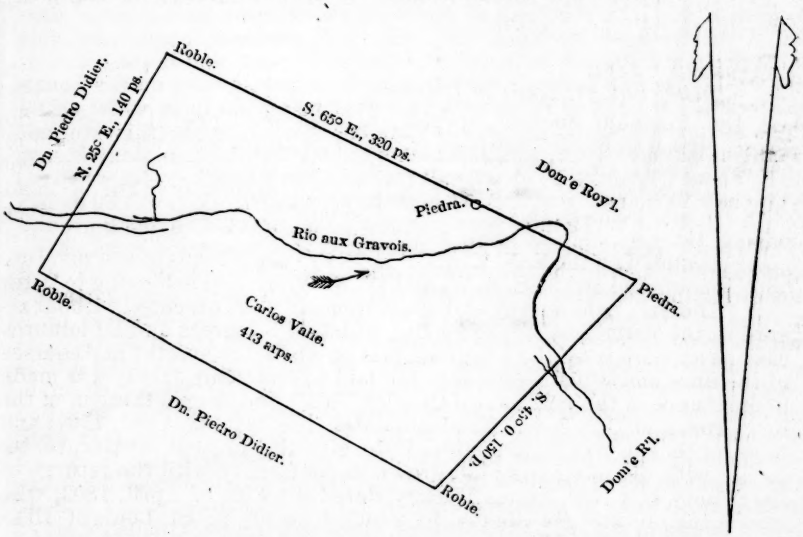
Which survey contains four hundred and sixty-two acres, twelve and a half perches, one hundred and twenty acres 147½ perches of which lies on the northeastward side of the river Des Peres, three hundred and forty acres and nine perches on the southwestward side of that river, and one acre and 16 perches of the river Des Peres itself, which is included within the survey.

634 WM. RUSSELL, *D. S.*

Examined and approved.

SILAS BENT, *P. D. S.*

V.—*Claim of J. B. Puyol, ex. of C. Valle.*



John Collgan, as assignee of Jean Baptiste Puyol, exr. and admr. to the estate of Carlos Vallé, decd., claims to hold under the 2nd section of the act of Congress arpens of land, situate on the river aux Gravois, district of St. Louis.

To Don Zenon Trudeau, captain of the stationary regiment of Louisiana, lieut.-governor and commander-in-chief of Illinois:

SIR: The petitioner has the honor to state to you that two years ago he had formed an establishment on River Gravois. Therefore he prays

you to be pleased to grant to him 15 arpens wide for 40 deep, the
635 limit thereof to be taken at the limit of the village of Carondelet.
The petitioner dares to hope that you will accede to his demand. He shall never cease to pray for your welfare.

St. Louis, the 11th April, 1797.

CHARLES VALLÉ.

Decree of concession to Puyol, exr. of C. Vallee.

The surveyor of this district shall put the petitioner in possession of four hundred arpens of land in superficié, at the place where he asks, as far as it is vacant and the conceding thereof is not prejudicial to anybody.

St. Louis, 11th of April, 1797.

ZENON TRUDEAU.

Note to survey.

Survey.

NOTE TO SURVEY.—Bounds were set the four corners, and posts on the lines, at the distance of 20 arpens between each, respectively. They are all shown on the above plat. All the trees on the line were marked with one blaze above two notches, and the trees on both sides of the lines were blazed only. Registered in book B of the surveys for said post, (St. Louis,) folio 12, No. 16.

UPPER LOUISIANA,
District of St. Louis of Illinois:

I, Don Antonio Soulard, special surveyor of Upper Louisiana, do certify that a tract of 413 arpens of land was, in presence and in favor of Charles Vallé, measured and bounded with the perch of the city of Paris, eighteen feet of the same city in length, agreeably to the method of surveying lands in this province. The land is situated upon the river named Gravois, distant nine miles (in the S. W.) from St. Louis, bounded on the N. N. E. and S. S. E. by vacant lands of the royal do-
636 main, and on the S. S. W. and W. N. W. by land belonging to Peter Didier. Said survey and measurement were executed without regard to the variations of the needle, which is 7 degrees and 30 minutes east, as appears from the foregoing plat on which the lengths and courses of the lines and other limits, &c., are laid down. This survey was made in pursuance of the petition (of Charles Vallé) and decree thereon of the lieut.-gov. and Don Zenon Trudeau, dated the 11th of April, 1797, and in order that it may be available, I do give the present certificate, together with the foregoing plat, drawn in conformity with the returns of the deputy surveyor, James Mackay, dated the 17th of April, 1803, who signed the minutes *the minutes*, to which I certify in St. Louis of Ill's., the 21 of August, 1803.

ANTONIO SOULARD, *Sp'l Surveyor.*

NOTE.—Here follows the copy of a deed from J. B. Puyol, as exr. of Carlos Valle, to John Colgin, conveying the aforesaid land, and a statement by Soulard that Valle had no other concession than this.

Document W also consists merely of extracts showing the concession to Colgin as the assignee of Vallé, per certificate No. 960, and it was thought useless to copy them here.

Indeed, all the documents, beginning with K and ending with W, might have been omitted, but for the reason given in Mr. Allen's argument, doc. Y.

F. W.

(Here follows map marked page 636.)

637 *Y.—Report of b'd of trustees of Carondelet.*

To General WM. MILBURN,
Sur. Gen'l of U. S., St. Louis, Mo.:

In compliance with your letter of 5th Dec'r, '39, accompanied by copy of letter from the Com'r of the Gen'l Land-Office, dated 24th Sept., '39, and the opinion of the Solicitor of the Treasury, "in relation to the land embraced in the survey of the Carondelet commons, south of the river Des Peres," we now submit for your consideration the information we have collected and which we think bears on the subject.

The information consists of the following documents, law, and testimony:

1st. The petition of J. B. Gamache, dated 6th Dec., 1796, to Zenon Trudeau, lieut.-governor of Upper Louisiana, the order of the lieut.-governor thereon, dated 7th of same month, and the certificate of Antoine Soulard, sur.-gen'l of Upper Louisiana, dated 25th Dec., 1797, and 18th Feb'y, 1806. (Doc. A, p. 17.)

2nd. The proceedings of the board of commissioners of land-claims in the claim of the inhabitants of Carondelet to commons. (Doc. B, p. 18.)

3rd. The act of Congress of 13th June, 1812.

4th. The certificate of confirmation of their claim to commons issued by United States recorder of land-titles at St. Louis, Mo. (Doc. I, p. 28.)

5th. The surveys and field-notes of the commons as certified by sur. gen'l, one of which surveys was made in by E. Rector, a
638 deputy surv'r of the U. S. The other by Jos. C. Brown, another deputy surv'r, in the year 1834. (Docs. C, D, p's 20, 21.)

6th. The plats of said surveys. (Docs. C, D, p's 20, 21.)

7th. The concession to Eugene Alvarez, dated 18th Nov'r, 1796, for 640 arpens; proceeding thereon before board of commissioners of land-claims. (Docs. S, T, p's 38, 39.)

8th. The concession to Gabriel Constant, dated 4th Sept., 1795, for 35 arpens; proceedings thereon before board of com's of land-claims. (Docs. L, M, p's 30, 31.)

9th. The concession to Gabriel Cerré, dated 15th March, 1789, for 10 by 40 arpens, and proceedings thereon before board of com's of land-claims. (Doc. N, p. 31.)

10th. The concession to Sophia Bolage, dated 3d June, 1796, for 150 arpens, and proceedings thereon before board of com's of land-claims. (Doc. R, p. 37.)

11th. The claim of Julien Chouquette for 640 arpens, and proceedings thereon before b'd of com's of land-claims. (Doc. K, p. 29.)

12th. The concession to Pierre Delor, dated 6th Dec., 1796, for 10 by 40 arpens, and proceedings thereon before board of com'rs of land-claims. (Doc. P, p. 34.)

13th. The concession of Jean B. Martigny, dated 25th April, 1783, for 12 arpens, by ordinary depth, and proceedings thereon before b'd of com'rs of land-claims. (Doc. Q, p. 36.)

14th. The affidavits of Marie P. Leduc, Joseph Charleville, Hyacinthe

Pigeon, George Shoultz, Philip Delor, Louis Courtois, and Jonah Parke. Pages .)

639 On the foregoing documents, law, and testimony the inhabitants of Carondelet would submit the following view of their claim to common:

The basis of their claim is the order of Zenon Trudeau, on petition of J. B. Gamache. This order is dated 7th December, 1796. Gamache asks in his petition for a tract of land, &c. The lieut.-governor, Trudeau says in the order on that petition "That the land asked for is included in what has been reserved for the supply of the necessary wood to the village of Carondelet, and the demand made by Gamache cannot take place, as also all concessions granted in the direction of the line taken at the end of the lands of the said village and running parallel with the Mississippi 150 arpens lower down." It is supposed and insisted that by "the lands of the said village" is meant the common-fields.

It appears from the official certificate of Soulard, sur.-gen'l of Upper La., dated 25th Dec., 1797, that this line of one hundred and fifty arpens had been attempted to be run, and was run, commencing from the lands of the village, south to the river Des Peres, and there the survey was arrested. The words of this official certificate do not convey the idea that the river was the end of the line, but that he surveyed no further southward; the certificate of the surveyor is, that the inhabitants were enjoined to make known the line of a tract of land which had been granted to them under date of 7th Dec., 1796, that they have agreed to have their line drawn to be taken from, &c., then proceeds with this language: "Having ascertained the courses of these same lands, I found that their courses were S. 28 W. I followed the same courses 23 arpens 3½ perches, at which distance I found the river

640 Des Peres. The end of the line on the border of the said river has been marked, &c.

This language shows that the 150 arpens was not run as required in the order of 7th Dec., 1796, and that the marking the line on the river was merely to show where it struck the river, and in confirmation of this the further certificate of the surveyor, dated 18th Feb'y, 1806, is appealed to, for if the survey mentioned in first certificate was a full survey of the commons, it would seem to be necessary to have a further survey. The certificate implies a part was yet to be surveyed.

It will be remarked that this petition and order and these certificates were filed recorded in the office of the U. S. recorder previous to June, 1808.

On 7th June, 1808, the inhabitants of Carondelet lay in their claim to six thousand arpens of land as commons adjoining village of Carondelet, by virtue of said order of 7th Dec., 1796, before board of commissioners of land-claims. The proceedings before the board on this claim closed 2d July, 1812.

The existence of a common attached to Carondelet is proven by this testimony before them, but there is no evidence of its extent other than the order of the lieut.-governor and the certificates of surveyor aforesaid. The decision of the comm'rs on this claim was unfavorable. The proceedings of the comm'rs on this claim, and their decision were by them reported to Secretary of Treasury 20 Jan., 1812. (See Am. State Papers, Pub. Lands, vol. 2.)

Congress, on the 13th of June, 1812, confirmed to the inhabitants of Carondelet their claim to commons. It may be asked what claim?

Certainly none other than the above, for of no other had Congress

641 any knowledge. It is not to be supposed they confirmed a claim

of which they had no knowledge. Having then, by that act, confirmed the claim, it must be intended the claim of which notice was given to the board of commissioners as aforesaid, and that claim was to run from the S. W. corner of the common-fields parallel with the Mississippi River, one hundred and fifty arpens lower down. Pursuant to such confirmation, the claim has been surveyed by the U. S. surveyor, and a patent-certificate issued by the U. S. recorder of land-titles.

In the field-notes of Brown' survey he speaks of the old line of the survey—of stones long set up in the line, and particularly at the S. W. and S. E. corners of the survey. It is true that the survey includes more than 6,000 arpens, but this can avail nothing, as the courses and distances will, agreeably to a well-established principle of law, control quantity, unless it can be shown that the courses and distances have not been observed, the right of the inhabitants of Carondelet to the whole survey, it is submitted, cannot be impeached.

But it is said, by the Solicitor of the Treasury, that the six concessions, lying within Brown's survey of the common and south of the river Des Peres, furnish evidence that the land in question (that part of commons south of the river Des Peres) was not regarded, by the Spanish officers, as parcel of the village *of* commons, because they were all forbidden to grant village commons, and the legal presumption is that they obeyed the instruction, and that, therefore, this land was not a common but public domain. (See letter of Solicitor of 6th August, 1839.)

With due respect to the Solicitor, we submit the following remarks on these six claims, referred to by him.

642 According to the surveys in the office of U. S. surveyor, there are only five claims south of the river Des Peres, and within Brown's survey of the commons. Perhaps between Alvarez' claim, which adjoins the common and is south of the river Des Peres, or the claim of Gabriel Constant, which might, at first glance, be mistaken as lying south of the river Des Peres, is intended as one of the six; we will, however, show that none of the seven claims named interfere with the right to common south of the river Des Peres.

We observe on the seven claims mentioned as follows:

1st. EUGENIO ALVAREZ.

The concession in favor of Alvarez was made on the 18th Nov., 1796, nearly one month before Trudeau's grant of commons. Of course the was, in this concession to Alvarez, no grant to an individual of part of commons. At date of his concession, it was part of the public domain, and so no violation of the law that commons could not be granted to individuals. This land, however, is without the commons, and being made before the grant of commons, its silence as to commons furnishes no argument against the right and title to the commons. It may, however, be observed in passing that the United States deputy surveyor who surveyed this claim of Alvarez in 1811 under order of board of com's, says in his returns that at that time the inhabitants of Carondelet laid claim to commons south of the river Des Peres.

2nd. GABRIEL CONSTANT.

This concession in favor of Constant was made on 4th Sept., 1795, more than one year before the grant of commons, and is, therefore, no evidence that the commons, granted one year and more there-

643 after, did not extend south of the river Des Peres. But this

claim is north of the river Des Peres, and would, according to the view of the Solicitor, furnish evidence that the inhabitants of Carondelet had no right to common north of river Des Peres, which however, we suppose, is not insisted on by him. The claim of Constant was surveyed in April, 1796, about nine months before the grant of commons.

3rd. GABRIEL CERRÉ.

The concession in favor of Cerré was made the 15 March, 1789, and lies south of the river Des Peres and within the survey of the commons made by Brown. It will not be pretended that this grant, dated 15th March, 1789, is conclusive or persuasive evidence that land at that date a part of the public domain was not granted as commons on 7th Dec., 1796—seven years and eight months subsequent. A comparison of dates will exclude all conclusion against the right to commons derived from the concession to Cerre.

4th. SOPHIA BOLAGE.

The concession in favor of Sophia Bolage was made on the 3rd June, 1796. This was six months before the grant of commons, and so no evidence that the commons subsequently granted did not extend south of the river Des Peres.

5th. JULIEN CHOUQUETTE.

This, so far from being a concession, is a claim under act of Congress of 3rd May, 1807, 2nd section, and based on actual possession, and was confirmed by com'rs in 1810; thence not within the grounds taken by the Solicitor.

6th. PIERRE DELOR.

644 The concession in favor of Pierre Delor was made on 6th Dec., 1796, the day before the grant of commons. In this concession to Delor, the lieut.-gov'r granting it, who is the same that granted the commons, says: "The surveyor of this jurisdiction shall put Mr. Delor de Treget in possession of the land he asks, in the place and in the shape designated, provided it belongs to the King's domain, and is not prejudicial to any other concession heretofore granted." But, were the grant not thus guarded, it being the day before, is the same as if it was the year before.

7th. JEAN B. MARTIGNY.

The concession in favor of Martigny was made on 25th April, 1783. The date is antecedent to the grant of commons, and so falls within the remarks made on the other claims similarly situated.

In conclusion, we would refer to the several affidavits submitted, which will show the following facts, as extracted from each of them.

1st. MARIE PHILIP LEDUC.

That in 1799 the people of Carondelet claimed and used as common land north and south of the river Des Peres, and have ever since claimed

and used the same as such, and as property in them belonging; and that such right was always recognized under the Spanish government up to the change of the sovereignty of the country.

2nd. JOSEPH CHARLEVILLE.

That for the space of 40 years and more, the claim to common
645 north and south of the river Des Peres has been made, and land north and south of the river have, during all that time, been used by the people of Carondelet as their commons; that said commons was granted by the Spanish gov't, and that previous to the change of gov't a blazed line existed north and south of the river Des Peres, and for about 2 miles south of Jefferson Barracks, showing the extent of the commons.

3rd. HYACINTH PIGEON.

That in 1806, commons was claimed north and south of the river Des Peres; that at that time the line south of the river was blazed; that it was then understood and said that the line of the survey was stopped at the river Des Peres on account of high water; that the blazed line, to the whole extent of the commons, was then visible, and was followed round by the affiant; that the inhabitants exercised the same right south of the river Des Peres which they did north; that in 1821, when the survey of the commons was made by Mr. Brown, affiant carried the chain, and followed exactly the same blazed line shown to affiant in 1806, as far as the S.W. corner of the commons, where they found a corner-stone; thence they continued on last line to the river, where they again found another corner-stone.

4th. GEORGE SHOULTZ.

That for about 45 years the claim of commons has existed north and south of the river Des Peres, and the north and south line given by Mr. Trudeau extended on south side of the river Des Peres about 127
646 arpens, and during same period has been exercised in their extent; that it was always considered to extend N. and south of the river, under the grant of Trudeau (lieut.-governor;) that a survey of the commons was commenced by Antoine Soulard, under the Spanish government, but not finished, on account of the high water; that several years after the survey thus began by Soulard, he sent B. Cousin to complete same; that affiant, with others, was employed to assist Mr. Cousin in blazing, carrying chains, &c., and upon fixing compass to make start the same was found out of order, and survey was therefore not completed.

5th. PETER DELOR, Sen'r.

That the claim to commons has existed for about 45 years, and has been used during that period, and that the claim and right extended one hundred and fifty arpens south of the lands of the inhabitants of Carondelet, that is, from the S.W. corner of their common-fields running south and parallel to the Mississippi River 150 arpens, and thus under grant from Trudeau, that a survey of the commons was begun by Mr. Soulard about 43 years ago. Affiant was present, and others, (names given.) They all went to the S.W. corner of the common-fields

of Carondelet, in order to run the line of the land, or the 150 arpens below, granted by Trudeau, and surveyed the line as far as river Des Peres. Having arrived at the river, they were compelled to stop on account of high water, there being no bridge or other way to cross
647 the same, and returned home. Several years after this Soulard sent one Cousin to continue the survey, but for reason of compass being out of order survey was not continued.

6th. LOUIS COURTOIS.

That the claim to commons has existed for about 45 years and extended N. and S. of river Des Peres, and to this extent the right of commons has been exercised during same period; that the extent o commons was bound by a line, 150 arpens, granted by Mr. Trudeau, to begin at S. W. corner of common-fields of Carondelet, and run parallel to the Mississippi, and that this line would extend about 127 arpens south of the river Des Peres; that a survey of the line so granted by Trudeau was begun under the Spanish government, but was not proceeded on further than the river Des Peres on account of high water; that several years after one Mr. Cousins was sent to continue the line, but after hands were obtained to assist in the survey the compass was found to be out of order, and so the same was not finished; that when the survey of Soulard was left unfinished, as aforesaid, the inhabitants of Carondelet, by order of lieut.-governor or of Soulard, continued the line south of the river Des Peres, and blazed same to the extent claimed.

7th. JONAH PARKE.

That in 1808 there was a blazed line then understood to be the line of the commons of Carondelet, which line extended south of the
648 river Des Peres, and from appearance of blazes must have been made many years before, and during time of the Spanish government; that in the year 1821 a surveyor, named Rector, run the line of the commons; affiant followed him some distance—as far as S. W. corner of commons; and while together the surveyor followed the old blazed line and blazed many of the same trees before blazed; that this line runs between 4 and 5 miles south of the river Des Peres, and thence to Mississippi River.

We conclude with the observation that this testimony supports the view taken by us of the documentary evidence.

St. Louis, 12th Feb'y, 1840.

Very respectfully, &c.,

The Board of Trustees of the Town of Carondelet,

By BEVERLY ALLEN.

No. 1, *(referred to in Doc. Y.)*

M. P. LEDUC.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, Mary Philip Leduc, resident in the city of St. Louis, in the county of St. Louis, in the State of Missouri, do hereby certify that I am about 68 years of age; that I came in the then Upper Louisiana, now State of Missouri, in the month of February, 1793,

where I resided, except on occasional absence, until this day; that I came to St. Louis in Nov., 1799, where I resided till the day of the date hereof; that the town of Carondelet, in the county aforesaid, was then settled, and that the inhabitants of said town, then the village of Carondelet, lived on town-lots, cultivated their common fields, and used what is now called their commons, north and south of river Des Peres, for the supply of timber for their fields and village, the mowing of hay, and pasturage for their cattle; that the said inhabitants have constantly used and claimed the commons aforesaid as their property.

That from the month of November, 1799, until the cession of this country to the United States, to wit, until the 9th day of March, 1804, I have acted as private secretary of the Spanish lieut.-governor, Don Carlos Dehault Delassus, in St. Louis, during which period the subject of the Carondelet commons was several times mentioned; the said lieut.-governor never objected to the right of the inhabitants of Carondelet to said commons, but, on the contrary, recognized their right to the same.

That at the time when Gen'l Atkinson went down with the troops to the now Jefferson Barracks, south of river Des Peres, I was requested by an officer of the Army to go down to Carondelet to draw an article of agreement between the United States and the said inhabitants of Carondelet, a deed of release of a portion of their commons south of the river Des Peres, with the understanding that, as soon as the troops would abandon that ground so released, *that* the same would revert to said inhabitants, with all the improvements thereon, without paying anything therefor; which said proposition being assented to by said inhabitants, the contract was drawn duplicate, one by an officer of the Army, probably Mr. McKee, and the other by me, and executed.

The reason of my being called upon for such purposes was, as *I have* been insinuated at the time, that my standing with the inhabitants would bring the contract to a sooner determination.

Dated St. Louis, Jan. 27th, 1840.

M. P. LEDUC.

No. 2. JOSEPH CHARLEVILLE.

Interrogatories propounded to Joseph Charleville on subject of commons of the inhabitants of Carondelet.

1st quest. How old are you?

Ans. I am seventy years old.

2nd ques. How long have you lived in what is now called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I have lived in the State now called Missouri forty-nine years, all of which I have lived in the vicinity of what is now called Carondelet Township; my farm, on which I have resided the last 22 years, is about 10 miles from the town of Carondelet.

3rd ques. Were you acquainted with the village of Carondelet, and for how long?

Ans. I have been acquainted with the village 49 years.

4th ques. Do you know anything of the commons claimed by the inhabitants of that village?

Ans. Yes; I do.

5th ques. How long have you known of such claim being made by them?

Ans. Forty-odd years.

6th ques. For what purpose was their common used?

Ans. For to mow, fire-wood, house-building, rails, and whatever purpose the inhabitants wished.

7th ques. What was the extent of the commons as claimed and used by them?

Ans. I have always known their line to commence at the Sugar-Loaf, thence a continuance of said commons extending south of the river Des Peres a southerly course four and a half or five miles, thence to the Mississippi, being about 2 miles below what is now called the Jefferson Barracks.

8th ques. Do you know that their claim of commons extend south of the river Des Peres?

Ans. Yes; I do; as I have expressed before in my 7th answer.

9th ques. Do you know of their exercising right of commons south of the river Des Peres, and what mode did they exercise said right?

Ans. They have exercised their right as before stated in my 6th answer.

10th ques. Do you know their claim of common extended north of the river Des Peres?

Ans. Yes; I do, as before stated; the Sugar-Loaf is on the north side of the river Des Peres.

652 11th ques. Do you know of their exercising right of commons north of the river Des Peres, and in what mode did they exercise such right?

Ans. I do know of their exercising the same right on the north as they have on the south side.

12th ques. Do you know of any recognition of such claim north and south of the river Des Peres by the Spanish authorities while this country was under the government of Spain?

Ans. Yes; I do know that said commons was given under the Spanish government, and many years before this part of the country was ceded to the United States, for I well *I* remember that there was a blazed line beginning at the Sugar-Loaf and extending, as before expressed, about 2 miles below what is now called the Jefferson Barracks.

13th ques. Do you know of any survey of their claim of commons made or begun under the Spanish government, when and by whom; and if the same was finished, what has become of plat of same, and what lands did it include; and if not finished, why, and all particulars concerning same?

Ans. Not being interested in said commons, I never was present or made any enquir'es of said survey or plat, but as for the line and extent of said commons it was known during the Spanish government by a line blased on the trees extending as I expressed before in my 12th answer.

14th ques. Do you know anything more rel. to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I have stated all I know.

JOS. CHARLEVILLE.

653 ST. LOUIS COUNTY, *Jan'y 18th*, 1840.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the eighteen' day of Jan'y, in the year of our Lord one thousand eight hundred and forty, before me, the subscriber, one of the justice' of the peace for the Central township, county aforesaid, Joseph Charleville is personally known to me to be the persons whose names is subscribed to the foregoing instrument

of writing, and acknowledged it to be his act and deed for the purpose therein mentioned.

Taken and certified this day and year aforesaid.

LOUIS BOMPART,
Justice of the Peace.

No. 3, (referred to in doc. Y.)

HYACINTH PIGEON:

Interrogatories propounded to Hyacinth Pigeon by the inhabitants of Carondelet, concerning their commons, on this 11th day of July, A. D. 1840.

Ques. 1. Mr. Pigeon, how old are you?

Ans. I will be 61 year' old on the 3rd day of October next.

2. How long have you lived in what is now called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I arrived at what is now called the city of St. Louis, State of Missouri, in the year 1804, and in 1805 I first went to what is now called the town of Carondelet and in 1806 I became a citizen of
654 the said town of Carondelet and never left the same town ever since.

Ques. 3. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

4. How long have you known of such claim being made by them?

Ever since I have been here, for I was shown by them the corner-stone of their division, between them and the inhabitants of St. Louis; which corner-stone was placed about 2 miles north of said town, at the place called the Sugar Loaf, and in 1832 I saw the same corner-stone there yet.

5. For what purpose was their common used?

The inhabitants of Carondelet used it as they needed it for logs, rails, firewood, hay, &c., as their own property.

6. What was the extent of the commons claimed by them and used by them?

As to the north part of said commons, that is, north of the said town, it extended about 2 miles, as far as SugarLoaf, where, as I before stated, the corner-stone was placed.

Ques. 7. Do you know that this claim of common extended south of the river Des Peres?

Ans. Yes, I do; when I first came here, in 1806, I was shown by the inhabitants of Carondelet a survey of their common south of said town, began by Antona Soulard and made as far as river Des Peres, where said survey had been stopped on account of high waters. The
655 said inhabitants also made me then acquainted with the line of their commons south of the river Des Peres, which line was then well blazed and extended parallel with the river Mississippi about 127 arpens, and which line I myself followed round.

Ques. 8. Do you know that they exercised right of commons south of river Des Peres; and in what mode did they exercise such right?

Ans. Yes, I do; they used it with the same privilege and use as they did the north part, as their own property, expelling all intruders thereon, in order to avoid all trespass which might have been committed thereon.

Ques. 9. Do you know that their claim of commons extended north of the river Des Peres?

Ans. Yes, I do; as before stated, as far as Loaf Sugar, where there existed a dividing line between the commons of St. Louis and the commons of Carondelet.

Ques. 10. Do you know of their exercising right of commons north of the river Des Peres; and in what mode did they exercise such right?

Ans. With the same power and rights as they did the south of river Des Peres; prohibiting the inhabitants of St. Louis, or any other person, to cross their line, which, as said, was at Loaf Sugar.

Ques. 11. Do you know anything more relative to the claim of commons claimed by the inhabitants of Carondelet? If so, state all you know.

Ans. Some time in 1821 a survey of said commons was made south of river Des Peres by Mr. Brown, when myself I carried the chain, and we followed exactly the same blazed line shown me in 1806, as
656 far as the S. W. corner of said commons, where we found a corner-stone; from thence we continued on east line to the river, where we again found another corner-stone. Said survey was made, as I believe, by Mr. Jas. C. Brown, deputy, under one Mr. Rector.

Given under my hand at Carondelet this 11th day of Jan'y, A. D. 1840.

his
HYACINTH × PIGEON.
mark.

Teste: L. FASSEN.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this 11th day of Jan'y, in the year of our Lord 1840, before me, the undersigned, one of the justices of the peace within and for the county aforesaid, came Hyacinth Pigeon, who, being by me duly sworn according to law, deposeth and saith that all the foregoing answers by me made and answered are all just and true.

Sworn and subscribed to, the day and year before mentioned, before me.

JOSEPH LE BLOND,
Justice of the Peace.

No. 4, (referred to doc. Y.)

G. SHOULTZ:

657 Interrogatories propounded to George Shoultz, sen'r, by request of the inhabitants of Carondelet, relative to their commons, on this 4th day of Jan'y, A. D. 1840.

Ques. 1. Mr. Shoultz, how old are you?

Ans. I think I am 69 years old.

Ques. 2. How long have you lived in what is called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I have lived in the State of Missouri. now called, fifty-four years, of which I have lived 49 years in the township now called Carondelet Township.

Ques. 3. Were you acquainted with the village of Carondelet, and for how long?

Ans. For 52 years ago.

Ques. 4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

Ques. 5. How long have you known of such claim being made by them?

Ans. About forty-five years ago.

Ques. 6. For what purpose was their common used?

Ans. For to mow; to cut wood for houses, rails, and many farming necessaries; whatever the said inhabitants wished to disposed of as their own.

Ques. 7. What was the extent of the commons as claimed and used by them?

Ans. As to the north part of the commons north of said village, I have not an exact knowlege of its extent.

Ques. 8. Do you know that their claim of commons extended south of river Des Peres?

658 Ans. Yes; I know that the continuation of 150 arpens granted by Mr. Trudeau, beginning at the S. W. corner of the common-fields of said Carondelet, extending about 127 arpens south of the river Des Peres, thence parallel to the Mississippi.

Ques. 9. Do you know of their exercising rights of common south of the river Des Peres; and in what mode did they exercise such right?

Ans. I do; as I have before stated, to any use they thought proper.

Ques. 10. Do you know that their claims of commons extended north of river Des Peres?

Ans. Yes, I do.

Ques. 11. Do you know of their exercising rights of common north of the river Des Peres; and in what mode did they exercise such right?

Ans. I do know of their exercising right of common north of the river Des Peres, and, as I before mentioned, in the same mode as they did south of river Des Peres.

Ques. 12. Do you know of any recognition of such claim north and south of river Des Peres by the Spanish authorities while this country was under the government of Spain?

Ans. Yes; I know that said commons was given by Zenon Trudeau, by the Spanish authorities under the Spanish government.

Ques. 13. Do you know of any survey of their claim of common made or begun under the Spanish government; when, and by whom, and, if the same was finished, what has become of the plat of the same; and what did it include; and if not finished, why? And all

659 particulars concerning same.

Ans. I have knowledge of a survey commenced of said commons by Antoine Soulard under the Spanish government; but said survey was not finished on account of the high stage of the waters of river Des Peres, which prevented the surveyor from going any further, and for which reaaon, I suppose, a plat was not made.

Ques. 14. Do you know anything more relative to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the first beginning of said survey Mr. Soulard sent one Bartholomew Cozens to come and continue the same survey, and, when all ready, myself and others to help in carrying the chain, blazing. On placing the compass to make a start, said compass was found deranged, and therefore we were not able again to continue.

his
GEORGE + SHOULTZ, SEN'R.
mark.

Teste,:
L. FASSEN,
DELPHY CARLIN.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the 4th day of Jan'y, in the year of our Lord 1840, personally came before me, one of the justice' of the peace for the aforesaid county, George Shoultz, sen'r, who, being by me duly sworn according to law, deposeth and saith that all the foregoing answers by him made and subscribed to are just and true. Sworn and subscribed to before me the day and year before mentioned.

JOSEPH LE BLOND,
Justice of the Peace.

660 N. B.—It was considered useless to copy papers numbered 5, 6, and 7, referred to in Document Y, consisting of interrogatories addressed to Peter Delor, Louis Courtois, sen'r, and Jonah Parke, as they are in effect the same questions and answers already obtained in the preceding documents, and threw no new light on the subject whatever.

F. M.

Letter.—Whitcomb to Milburn.

GENERAL LAND-OFFICE, *Jan'y 20th*, 1841.

SIR: In relation to the claim of the village of Carondelet, in Missouri, to a tract of land called the commons of that village, within which the military post of Jefferson Barracks is situated, I herewith enclose for your information a copy of Report No. 300 of Solicitor McRoberts, and a copy of a communication of the 18th November last from the Secretary of War, with a copy of his letter of the 16th of the same month to Brigadier-General Atkinson at Jefferson Barracks.

You will perceive that the Solicitor advises "that the tract of land beginning on the Mississippi River at the figure laid down upon plat X, (which plat accompanied your report of the 15 of April last,) and near the northeast corner of Martigny's survey, thence with the black-dotted line to d, thence with said line to the river Des Peres, and up the river to the line of Alvarez survey, and across the river to letter e, and
661 from said letter e to c, and on to the river, with the present survey, be reserved for the future action of Congress," and remarks that by making this reserve Congress can grant the 6,000 arpens (all the inhabitants claimed, which 5,104.20 acres, including all private clams,) "to the village of Carondelet for a common, or in such manner as may be deemed proper, and can retain of the public land 1,702 acres as a site for Jefferson Barracks, or for any disposition that may be judged expedient."

He further advises "that the balance of the unappropriated land without those limits and included in Rector's and Brown's surveys, and which amounts to several thousand acres, be reserved and sold as public land."

Concurring in this report, I have addressed a communication to the Hon. Secretary of the Treasury with a view of having the matter brought to the attention of Congress for such action as may be deemed proper in the way of making a grant to the village of Carondelet, &c.

In the mean time you are requested to represent on your records the tract within the limits suggested by the Solicitor and referred to in the foregoing as lands reserved for the purpose alluded to, and the balance of the unappropriated land without these limits and included in Rector's

and Brown's surveys you are instructed to have surveyed as public land to the end that the same may be duly brought into market as such.

Very respectfully, your obt. servant,

JAS. WHITCOMB,
Commissioner.

WM. MILBURN, Esq.,
Sur. Genl., St. Louis, Mo.

662 No. 300.—*Opinion of Solicitor.*

GENERAL LAND-OFFICE,
Solicitor's Bureau, October 22nd, 1840.

SIR: The surveyor-general of Missouri and Illinois has, in pursuance of the directions contained in your letter of the 24th of Sept., 1839, submitted a report, with various accompanying documents, upon the claim of the inhabitants of the village of Carondelet, in the State of Missouri, to a tract of land lying south of the river Des Peres as a common.

I have examined this report and the accompanying evidence and exhibits and submit the following as the result of this examination.

On the 22nd of June, 1839, the Secretary of War addressed a letter to the Commissioner of the General Land-Office, enclosing a letter from the surveyor-general of Missouri, and plat of survey, and requested that measures be taken to sell the land south of the river Des Peres as designated on the plat, and which was claimed as common by the village of Carondelet, but which he believed belonged to the United States.

The subject was referred to Judge Burchard, the Solicitor, who reported that *reported that* several thousand acres of land included in Brown's survey of the common was public property, to which the citizens of Carondelet had no legal or equitable claim, and that the same, with the exception of the part need' for military purposes and the portions
663 included in private claims, should be surveyed and sold as public land.

The district attorney of Missouri has also given an opinion against the validity of the claim to common of the tract of land lying south of the river.

The surveyor-general entertains a different opinion, as appears from his report dated 15th of April, 1840.

The subject is one of great importance, looking to the amount of property, and still more so as it affects the principles involved in the decision. The claims to lands designated as commons in favor of the inhabitants of Carondelet, be it little or much, depends upon the act of Congress approved 13th June, 1812, 1st volume Laws and Instructions, chap. 140, the first section of which provides that "the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons in, adjoining, and belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Arkansas, in the Territory of Missouri, which lots have been inhabited, cultivated, or possessed prior to the 20th day of Dec., 1803, shall be, and the same are hereby, confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto." The act then contains a proviso excepting from its operation any claim or claims to the same lands, or any part thereof, confirmed by the board of commissioners. The 2nd section also gives the President power to reserve certain proportions of such lands for military purposes.

664 On the 27th of January, 1831, Congress passed another act (same vol., chap. 406) which declares that "the United States do

hereby relinquish to the several towns and villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, and Little Prairie, in the State of Missouri, all the right, title, and interest of the United States in and to the town or village lots, out-lots, common-field lots, and commons in, adjoining, and belonging to the said towns or villages, confirmed to them respectively by the 1st section of the act of Congress passed the 23rd of June, 1812, to be held by the said inhabitants of said towns and villages in full property, according to their several rights therein, to be regulated or disposed of for the use of the inhabitants according to the laws of the State of Missouri."

This last act, which was approved the 27th of July, 1831, confers no new or additional rights. It is nothing but a bare relinquishment from the Government of the land confirmed to the several towns and villages by the act of June 13th, 1812. Indeed, it is difficult to perceive what object was contemplated by the act of 1831, unless it was to acknowledge a right in the State of Missouri to pass laws for the final disposition of the property, and especially the school lands, referred to in the 2nd section.

The act of 1812 being the foundation of this claim to commons by the inhabitants of Carondelet, we will proceed to examine its provisions, together with the evidences of right to this commons.

The act does not, as seems to have been supposed, confirm all claims to lots or all claims to commons; on the contrary, it virtually negatives mere claims not founded in right. It confirms the title to the land not according to the claim, but according to the several right or rights of the parties. These are the words, "that the rights, titles, and claims to the town or village lots, out-lots, common-field lots, and commons," &c., &c., "are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

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Here we have rights, titles, and claims confirmed, but not indiscriminately. They are confirmed only according to "their several rights," or according to their rights in common thereto. This act does not say that these lands shall be confirmed according to the claim of the parties. Not at all; but it expressly enacts that it confirms claims according to the "right or rights" of the claimant or claimants, and not otherwise.

Had the act of 1812 read thus, "That the rights, titles, and claims to town or village lots, common-fields lots, and commons," &c., "are hereby confirmed to the inhabitants of the respective towns and villages aforesaid," and no other words, the case would then have been clear. The mere naked claims would have been confirmed.

If Congress intended to confirm such would not the enactment have been expressed in the very words as stated? But Congress intended no such thing, because in the enacting clause of the statute, and as a very material part of it, it added, "according to their several right or rights in common thereto."

By confirming the titles to lands according to rights, it negatives all those not founded in right. The rule is well illustrated by the maxims, "expressio unius, est exclusio alterius." But it may be *be* asked, why were the terms "rights," "titles," and "claims," inserted in the act if Congress did not mean to confirm them all, and what was meant by "rights," "titles," and "claims"? This is the answer, Congress was legislating with regard to property that had belonged to two other governments, France and Spain. These govern-

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ments had adopted rules for the disposition of the public domain. In some instances absolute grants had been made. The fee-simple had passed, and Congress merely recognized and affirmed that which is the treaty, and the law of nations was already absolute.

Other cases existed where the title had not been perfected, but where the claimants had complied with their agreements and with the laws and usages of the Government previous to the cession of Louisiana to the United States, and where good faith and strict justice required that the titles and claims should be perfected. It was for the confirmation of such rights, titles, and claims that this act of Congress was passed. Claims not founded in right or stained with fraud, are not claims within the meaning of the law and were never contemplated.

The construction that the lands were to be confirmed according to right makes the case intelligible. It is rational, it opens the door to investigation in order that the Government and individuals may have a full and impartial hearing. But to contend that all claims, however vague and unfounded, are embraced in this act of Congress makes the case irrational, because it produces investigation; nay more, such a construction would subvert the obvious intent of its makers and
667 the principle of universal justice. I therefore conclude that no claim was confirmed by the act of June 13th, 1812, except those founded in right.

The next inquiry is, has the claim to common by the citizens of Carondelet to the lands lying south of the river Des Peres any foundation in right?

Before proceeding with the enquiry it is proper to remark that there is no evidence of any grant of this land to the village of Carondelet, or any other purpose, by the Spanish authorities.

On the 6th of Dec., 1796, John Bte. Gamache presented a petition to the lieut. governor, Zenon Trudeau, in which he states, "That after the petition he handed to you on the 5th of October last, for the purpose of obtaining the continuation of their lands, (meaning the inhabitants of Carondelet,) you told him that altho' you could not accede to his demand you would, however, make your efforts to grant him 40 arpens of land above the parc."

The petition then proceeds to inform the lieut. governor that he has a mill, and prays for a grant of land to himself, to be bounded by the land of Mr. Constant, the Mississippi, and the river Des Peres and the village of Carondelet.

Upon this petition Mr. Trudeau made the following endorsement: "The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village and running parallel to the Mississippi, one hundred and fifty arpens lower down, cannot be admitted. St. Louis, the 7th Dec., 1796."
668 What became of the petition of the 5th of October does not appear. Its object seems to have been a direct application for an extension of the village common, and was refused.

On the 25th of Dec., 1797, Antoine Soulard made this certificate:

"We, the undersigned, a surveyor commissioned by the government, do certify to all to whom it shall appertain, that on this 21st of Dec., in virtue of the order transmitted by the lieut. governor to Mr. De Treget, captain commandant of the said village, enjoining upon the inhab tants to make known the line of a tract of land which was conceded to them on the 7th of Dec., 1796, which line must be parallel with those o Mr.

Ant'e Reilhe and Alvarez, the said inhabitants in pre'nce of their commandant have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands which had been formerly surveyed by Mr. Pierre Chouteau in virtue of an order from the lieut. governor. Having taken the bearings course of these same lands, I found that they ran S. 28° W. I followed this same course 23 arpens 3½ poles, at which distance I intersected the river Des Peres. The end of the line on the bank of the same river has been bounded with a stone, having for witness two flint-stones and a flattened bullet. The land of Mr. Alvarez must be distant from the said stone bound 24 feet, in following the same line parallel and in order that the said inhabitants may prove the same. I have delivered these presents.

"St. Louis of Illinois, 25th Dec., 1797.

"ANTOINE SOULARD."

669 On the 18th day of February, 1806, Mr. Soulard made out a certificate that the inhabitants of Carondelet had requested him to measure for them "a portion of the land which was granted to them as a common by the lieut. governor, Don Zenon Trudeau;" that Mr. B. Cousin was to have made the survey, but when he went to the place his compass was out of order and he failed to make the survey, and that his engagements had prevented him from doing it.

This certificate was made several years after the change of government, was not under oath, was not authorized by any law, and gives no description to the land. It is, therefore, not such a paper as can be of any service in the examination of the case.

For the purpose of making out a claim to common, sundry ex-parte affidavits have been made by citizens of Carondelet, and which the surveyor-general had included with his report. These affidavits state that the inhabitants have been in the habit of procuring rails, wood, hay, &c., from the land claimed, or a part of it, for a considerable length of time, some of them say as much as forty or fifty years. They all speak of the survey made by Mr. Soulard the 25th of Dec., 1797, and which terminated at the river Des Peres. In these affidavits it is also stated that Mr. Soulard proceeded no further than the river before named, in consequence of high water.

Louis Courtois, sen'r, testifies, "They (the inhabitants of Carondelet) claimed and used as their commons from is called Loaf Sugar, (understood to be a mound,) about 2 miles north of the village of Carondelet, to said village and to their common-field." He also testifies that the lieut. governor, Trudeau, granted them 150 arpens, extending so th from the common-field and running parallel with the Mississippi, 670 and that the survey of Mr. Trudeau was not continued south of the river Des Peres because of high water. The affidavit also contains this passage: "I know that after the survey of Mr. Soulard, that is, by him begun and not finished, *that* the inhabitants of Carondelet themselves, either by order of Zenon Trudeau or Antoine Soulard, went and continued running a line south of the river Des Peres, and blazed the same to the extent they claimed."

Other persons speak of a blazed line being found when Mr. Rector made the first survey in 1821, and they also speak of a grant made by Lieut. Gov. Trudeau of this common to the inhabitants of Carondelet.

They also say that this line, blazed by themselves, was made during the time of the Spanish government, &c. I have copied the exhibits herein for the purpose of presenting a full view of this claim as made by the claimants themselves. We will now proceed to examine the exhibits and papers.

The ex-parte affidavits all speak of a grant by Lieut. Governor Tru deau, and they also refer in the clearest manner to his order endorsed upon the petition of Gamache, and it is to that that they refer when they speak of a grant. For example, the affidavit of Peter Delor, sen'r, contains the following passage: "They (the inhabitants of Carondelet) claimed north of the river Des Peres, and used as their commons as far as what is called Sugar Loaf, about 2 miles north of the town. Ques. "Do you know that the claim of common extended south of the river Des Peres? Ans. Yes; I remember that in the year 1796 a petition was presented to Mr. Zenon Trudeau by Mr. John B. Gamache and myself, in behalf of the inhabitants of Carondelet, for a continuation
671 of their land, to which petition Mr. Zenon Trudeau made the following reply, that he could not give us the continuation of our land, but seeing the industry of the people of Carondelet in fencing round their fields, he would grant them 150 arpens further down, beginning at the S. W. line of their common-fields and running a direct south course parallel with the river 150 arpens; which was granted as aforesaid by said Trudeau under his hand the same year."

I have copied this paper to show the impression of one of the inhabitants interested in sustaining the claim.

He says that when the petition was presented to Lt. Gov'r Trudeau for a continuation of the common, that he said he could not give them the continuation of the land, but would give them 150 arpens running a direct south course parallel with the river, and then that Mr. Trudeau made the grant under his hand the same year. The petition to Mr. Trudeau and his answer have been heretofore quoted. In the petition of Mr. Gamache of the 6th of October, 1796, he makes a reference to another petition which had been presented on the 5th of October, and the prayer of which had been refused. It must be that to which Mr. Delor refers in his affidavit. Mr. Delor refers expressly to Gamache and himself as having made application, and then adds that the 150 arpens south were granted by Mr. Trudeau the same year. The witnesses appear to be illiterate, and which accounts for their statements that Lieut. Gov'r Trudeau made a grant of the land. There is no grant whatever to the inhabitants of Carondelet of the land now claimed for commons, or for any other purpose.

The endorsement of Trudeau upon Gamache's petition is not a grant. He refused to grant the land for a common when the application
672 was direct for that purpose, in October, 1796. In Dec., 1796, when Gamache applied for a part of the same land, he endorsed upon his petition that the land applied for had been "reserved to furnish wood necessary to the village of Carondelet."

This declaration manifests an intention on the part of Gov. Trudeau to withhold the land for that purpose, and not to make any grants to individuals within the same.

He seems to have refused to make any grant of the premises, either to the inhabitants or to individuals. His refusal to make a grant the 5th of October of the land and his not having executed any grant to the village shows, most conclusively, that this tract of land was not severed from the public domain, and that it continued and was part of the domain of the King at the date of the cession.

The next piece of evidence which has been adduced in support of the right to this land as a common is the certificate of Antoine Soulard, the sur. general, which has been copied in the preceding part of this report.

In this certificate Mr. Soulard states that in pursuance of an order

of Lieut. Gov'r Trudeau, on the 7th Dec., 1796, and which corresponds precisely with the date of the endorsement of Trudeau upon Gamache's petition, and in which the inhabitants were enjoined to make known their lines, &c., he made a survey, as agreed upon, from the extremity of their land as surveyed by Mr. Chouteau; that the bearing was found to be S. 28° W.; that he run the line to the river Des Peres, being 23 arpens 3½ poles; that the end of the line was noted by stones and a leaden bullet, &c.

673 Why Mr. Soulard did not proceed with the survey, if he was in fact to have proceeded further, does not appear from his certificate. The ex-parte affidavits say it was on account of high water; but Mr. Soulard gives no information of any such obstruction. Had that or any other cause prevented the completion of the survey he could hardly have omitted to state it. His certificate, made in due form, proves a survey made by the consent of the inhabitants and their commandant to the river Des Peres, with the course and distances. He speaks of an order from Mr. Trudeau for this survey, but does not state what extent the survey was to be. If we judge from his acts, he was certainly limited to the tract north of the river Des Peres.

The order referred to is not produced, nor is there any record of it; and it is inadmissible to infer from the ex-parte affidavits that this order directed the survey south of that river.

In the year 1808 this claim was presented to the board of commissioners at St. Louis for 6,000 arpens. In the testimony then taken nothing was said about this survey of Soulard extending south of the river, and that any order or grant authorized such extension.

The survey of this land was first made by Mr. Rector in 1832, (1821,) the lines were retraced by Mr. Brown. Upon what principles Mr. Rector made this survey, so as to comply with any claim which had ever been made to this common, is wholly inconceivable. His survey is a total departure, not only from the survey of Soulard, but also from the claim of the inhabitants, and from the order of Trudeau reserving the land. Soulard certifies that he made his survey running S. 28° W. to the river Des Peres. Rector has *ran* S. 35° 30′ W. the whole length of Alvarez' claim, and the balance of the distance he has *ran* S. 36° 20′ W.,

674 which is a variation of between 7 and 8 degrees for upwards of 5 miles.

The oral testimony of all the witnesses is that Mr. Trudeau promised them, or granted them, 150 arpens running south and parallel with the Mississippi. In the order which Mr. Trudeau endorsed on Gamache's petition he says: "All concession in the direction of a line beginning at the end of the lands of said village and running parallel to the Mississippi 150 arpens lower down cannot be admitted," &c. Yet, in despite of all this data of claim, the survey is made not to run parallel with the Mississippi, nor due south, but to run 36° 20′ W. of south.

This is not all. The inhabitants never claimed but 6,000 arpens at any time, which 5,104.20 acres; but the surveyor did not confine himself to that quantity. He has surveyed for them 9,905.29 acres, which is nearly double the quantity claimed.

The surveyor-general, in his report dated the 15th of April, 1840, says: "You will see that my construction of the law is distinctly in favor of the village to the extent of 150 arpens from S. W. corner of the field lands, and were there no controlling circumstances, I would not hesitate to run the west boundary as represented by the black dotted line e d on the plat X, which is 150 arpens parallel to the general course of the Mississippi." He then proceeded to detail his reasons for not run-

ning the line as stated. There are founded, as he says, upon the operations of Soulard in running the line c e on the plat X, north of the river Des Peres, and the Spanish calls for the limits and common of Carondelet in the claims of Alvarez and Vallé upon the supposed intention of the Spanish government, and upon the act of Congress of June 13th, 1812.

675 From all this I respectfully dissent. I can neither accord in the premises nor in the conclusion of the surveyor-general.

1st. The survey of Soulard to the river, and his establishing his corner, and executing a certificate of the fact, does not prove that he was to make any survey south of the river, and if it did, it could not establish the fact that he was to run S. 26 30 W. for upwards of five miles, in direct violation of Trudeau's order upon Gamache's petition.

2nd. The calls for common in the claims of Alvarez and Vallé cannot change the explicit terms used by Trudeau, and which are these: Beginning at the end of the lands of the village, and running parallel to the Mississippi.

3rd. The intention of the Spanish government to extend this line according to Rector's survey is negatived by Trudeau's order and by the omission of the government to make any grant, or to cause any such survey to be made.

4th. The language of Soulard in making his survey north of the river Des, Peres "that the line must be parallel with those of Antoine Reilhe and Alvarez," and that the lands of Mr. Alvarez must be distant from the said stone 24 feet, meaning thereby the corner he established on the north side of the river, surely does not prove that such course was to be followed south of the river, much less does it show that he was to make any survey whatever south of the same.

5th. The act of Congress never intended to confirm claims not founded in right, and no inference can be drawn from it in any degree favorable to the claim under consideration.

From a full examination of the subject, I have come to the con-

676 clusion that the lands included in the survey of the commons were not granted by the Spanish government to the inhabitants of Carondelet for the purpose contemplated, nor for any other purpose; and that the endorsement of Lieut. Governor Trudeau upon Gamache's petition was not a grant of the land, and can only be treated as an intention to reserve a part of the lands south of the river, in his own words, "to furnish wood necessary to the village of Carondelet," and that the fee-simple in the soil did not and was not intended to pass out of the Spanish crown, and that the title to the land was in the crown at the date of the cession, and, as such, passed to the United States.

2nd. That the act of Congress of June 13th, 1812, did not confirm the land, as surveyed by Mr. Rector, to the village of Carondelet, nor was it effected by the act of 27th of Jan'y, 1831.

I, however, believe, that good faith to the citizens of Carondelet, and in fullfilment of what they were led to believe was the intention of Lieut. Gov'r Trudeau to do in the premises, that Congress will make a grant of some portion of the lands for the purpose contemplated. I, therefore, advise that the tract of land beginning on the Mississippi River at the figure 6, laid down upon plat X, and near the N. E. corner of Martigny's survey; thence with the blacks dotted line to d; thence with said line to the river Des Peres, and up the river to the line of Alvarez' survey, and across the river to letter e, and from said letter e to c, and on to the river, with the present survey, be reserved to the future action of Congress. The quantity within these limits is about 7,700 acres, as

estimated by the clerk of the surveys; within this tract is also situated the Jefferson Barracks of Missouri.

By making this reserve, Congress can grant the 6,000 arp's, which is all the inhabitants claimed, which is 5,104.20 acres, excluding all
677 private claims to the village of Carondelet for a common, or in such manner as may be deemed proper; and can retain of the public lands 1,702 acres, as a site for Jefferson Barracks, or for any disposition that may be judged expedient.

I further advise that the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys, and which amounts to several thousand acres be surveyed and sold as public land.

I am, very respectfully, your obdt. servant,

SAMUEL McROBERTS,
Solicitor.

NOTE.—The papers are all returned. Plat X, which is specially referred to, is made part of this report.

Letter.—Poinsett to Atkinson.

WAR DEPARTMENT,
November 16th, 1840.

SIR: I transmit herewith a copy of a letter from the Acting Commissioner of the General Land-Office, of the extract from the report of the Solicitor of that Office, and of the plat X, referred to by the Acting Commissioner.

You will perceive that this Office confirms the report of the Solicitor, and that the latter is of the opinion that the village of Carondelet has no legal claim to the land called the commons of that village, but that it has so strong an equitable claim to a part of it, Congress will probably sanction it, and he advises that a portion of it, which he designates, be reserved for the future action of Congress. The part thus
678 recommended to be reserved would allow 5,104.20 acres for a common for the village of Carondelet, which is the extent of its claim, and 1,702 as a cite for Jefferson Barracks and for military purposes connected with it. You will please cause this latter quantity to be laid in such direction as would be most useful to that post, and as would best answer for the general military purposes connected with it; and you will cause a plat to be made of it, and forward it to this Office as early as practicable.

Very respectfully,

J. R. POINSETT.

Brig'r Gen'l H. ATKINSON,
Jefferson Barracks, St. Louis, Mo.

WAR DEPARTMENT,
November 18th, 1840.

SIR: I return you the plat of the commons of the village of Carondelet, which accompanied your letter of the 11th inst., and for the information of your Office I enclose you a copy of the instructions given to Gen'l Atkinson to lay off and transmit a plat of that part of the tract, embracing 1,702 acres, which the Solicitor of your Office is of the opinion may properly be retained for military purposes. As soon as the plat shall

have been received from Gen'l Atkinson, a copy of it will be furnished to you.

Very respectfully, your mo. obt. servt.,

J. R. POINSETT.

JAMES WHITCOMB, Esq.,
Com'r Gen'l Land-Office.

679 NOTE.—On 16th Dec., 1851, the Com'r was requested by Sur. Gen'l Clark to furnish his office with a copy of the above plat, and one was sent, but not the one wanted.

F. M.

Letter.—Shields to Conway.

GENERAL LAND-OFFICE, *Sept. 1st*, 1845.

SIR: On the 11th July Alexander Kayser applied for instruc to be sent to you for a surety of a plat of the Carondelet commons, as directed in 1841, (p. 56,) which was refused by letter of this date, a copy of which is herewith enclosed.

It may be important, however, to have a diagram showing the area of that part of the survey of the commons approved by Sur. Gen'l Milburn on the 15th of April, 1840, lying north of the river Des Peres; and also the area of the tract within the dotted red lines, and within the dotted black lines. You will please, therefore, forward such a diagram, excluding the course the areas of the confirmed private claims.

Yours of the 20th ultimo has been rec'd, enclosing 24 plats of claims confirmed by the act of 4th July, 1836; and also yours of the 21st ultimo, transmitting 24 plats of subdivisions asked for by the reg'r at Clinton, Mo.

Very respectfully, your obt. servt.,

JAMES SHIELDS, *Comm'r.*

F. R. CONWAY, Esq.,
Sur. General, St. Louis, Mo.

680 *Letter.—Shields to Kayser.*

(Copy.)

GENERAL LAND-OFFICE, *Sept. 1st*, 1845.

SIR: In reference to your communication of the 11th July, requesting that the sur. gen'l at St. Louis may be directed to carry out the instructions of 1841 relative to the survey into sections of part of the land claimed by the village of Carondelet as "the common," I have carefully examined that claim and have come to the conclusion that it would be 'expedient at present to direct the survey of those lands, nor until the further action by Congress on the subject.

Very respectfully, your obt. servant,

JAMES SHIELDS,
Comm'r.

ALEXANDER KAYSER, Esq.,
St. Louis, Mo.

Letter.—Wilson to Sur. Gen'l.

GENERAL LAND-OFFICE, *February 5th*, 1853.

SIR: With a letter of the 26th ult'o I received the decision of the Sec-

retary of the Interior in regard to the "Carondelet-common case," and request that you will make known the purport of the same to all parties interested, and cause a survey of that claim to be executed in accordance with said decision.

On the 28th ult'o I addressed a letter to the Hon. Secretary of
681 the Interior, stating that as a survey in accordance with this decision will detach a considerable body of land from the survey of Carondelet, as retraced by Brown in 1834, I requested that he would advise me whether, in ordering a survey in accordance with his decision, the land which may be detached by the new survey from Brown's survey, and not included in any other claim, shall be laid open to sale, or whether the same shall be held in reservation, subject to the further action of Congress in regard to them.

When an answer shall have been received you will be duly advised of the same, so that your action may be in accordance therewith and that you may advise the land-officers of the proper district accordingly.

Very respectfully, your obt. servant,

JOHN WILSON,
Comm'r.

SUR. GENERAL,
St. Louis, Mo.

Report of Sec'y A. H. Stuart.—Decision.

THE CARONDELET-COMMON CASE.

(Copy.)

After a careful consideration of this case, I am led to concur in the opinion expressed and judgment pronounced by the supreme court of the State of Missouri, at the July term, 1844, in the case of Dent vs. Bingham, which involved the same principles which are in issue in this case.

I am of the opinion that the refusal of the lieut. gov'r, Trudeau, on the 7th Dec., 1796, to make the grant asked for in the petition of Gamache is not evidence of title. The answer of Lieut. Gov'r Trudeau is,
682 at the most, merely evidence of an intention or purpose to make a grant, but certainly does not of itself constitute a grant. A proprietor may very properly assign as a reason for not making a particular concession his purpose to dispose of the property in another way; but the expression of such a purpose vests no right or title, legal or equitable, in the party in whose favor this intention has been expressed. The only source from which the village of Carondelet can derive a title in this case is the confirmatory action of Congress. That action was founded on and limited by the claim then set up by Carondelet. The confirmation was not intended to extend, and did not extend, beyond the claim asserted, and that claim was for 6,000 arpens, extending in the direction described in the claim as *field*. It was not a claim by metes and bounds for an estimated quantity of land; for (if) it had been, then the boundaries and not the quantity would have governed. But it was a claim for a specified quantity of 6,000 arpens, without regard to the boundaries, except on the side next the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed.

This was the claim which was confirmed, and in my judgment the village can claim no more. If, therefore, that quantity can be had without

interfering with the rights of others which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off. The land-officer will cause the necessary orders to be made to give effect to this decision.

A. H. H. STUART, *Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, Jan. 25th, 1853.

683 *Report of Spalding, sur. gen., to Comm'r.*

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, 23rd March, 1853.

SIR: I received in due time the Commissioner's communication of the 5th ult'o, with which was enclosed the decision of the Hon. A. H. H. Stuart, Secretary of the Interior, dated the 25th Jan'y last, on the Carondelet-common case.

In that decision there is stated in regard to the right of the inhabitants of Carondelet to their commons, that the "confirmation was not intended to extend, and did not extend, beyond the claim asserted, and that claim was for 6,000 arpens, extending in a direction described in the claim as filed.

"It was not a claim by metes and bounds for an estimated quantity of land, for had it been, then the boundaries and not the quantity would have governed. But it was a claim for a specified quantity of 6,000 arpens, without regard to boundaries except on the side next to the village, and extending from the boundary of the village so far as might be necessary to embrace the quantity of 6,000 arpens claimed. This was the claim which was confirmed, and in my judgment the village can claim no more.

"If, therefore, that quantity can be had without interfering with the rights of others which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off. The land-office will cause the necessary orders to be made to give effect to this decision."

In his letter of the 5th ult'o, the Commissioner instructed the surveyor-general to cause a survey of the common of Carondelet to be made in accordance with said decision.

684 I would at once have issued directions to execute the survey of the common of Carondelet, in accordance with the views of the Secretary of the Interior, had I fully understood some points in his decision that appear to me to be rather obscure, and which it is the object of this letter to lay before you for your consideration and further instructions.

1st. The Secretary says it was a claim for a specified quantity of 6,000 arpens, without regard to boundaries, except on the side next to the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed.

The village of Carondelet was not laid out under the Spanish government, when it was only composed of some lots in the northern part; subsequently a certain number of lots were confirmed by the old board and by Recorder Bates, under the acts of 1807 and 1812, and proven before Recorder Hunt, under the act of 1824.

Joseph C. Brown surveyed the village in 1839, including in his survey many parcels, and even whole blocks, within which no confirmations were ever made or possession proven. The

See accompanying diagram A.

northern part of the commons, which is covered by blocks, is the village as surveyed by Mr. Brown. Now, what must be the boundary of the common on the side next to the village from which the expected survey is to be made to depart southerly, I cannot determine.

Line 139, 24 chains on diag. A.

If the southern line of the common-field prolonged through the village to the Mississippi River, which the board ordered on the 15th June, 1808, to be run "for the purpose *as* ascertaining the length of said line in French arpents," and which was run by Silas Benton the 17th of same month, is to be taken for the commons line nearest to the village, and thus become the northern boundary of the common, then this line (which appears to have been wholly experimental) will cut through the village and leave south of it a portion thereof on which are lots confirmed upon possession prior to 1803. Besides that, the portion of the present common north of the village will have to be abandoned as such, and as that strip does not contain any village lots and out-lots, nor common-field lots, it would become public land.

B. Of report of 15th April, 1840.

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As to this northern part of the common of Carondelet, it is proper to remark here, in justice to the inhabitants of that village, (though with the express understanding it is not for the purpose of disturbing the present northern boundary of their common as established by Mr. Brown,) that the line "2 arpens below the Sugar Loaf" was originally the northern boundary of the common of Carondelet and the southern line of the common of St. Louis in the survey of James Mackay in 1806 for 4,293 arpens of this latter tract, which was produced in evidence by the people of St. Louis to the board, on the 10th of May of that year, in support of their claim thereto; and which quantity of 4,293 arpens was the amount of said claim, and therefore became also the amount of the confirmation by the act of 1812.

Accomp'g diag. A.

Accomp'g diag. B.

A. S. P. III, p. 549

Again, on the 29th July and 23rd Nov., 1825, the inhabitants of St. Louis proved Bapt'e Rivierè the southern line of their common to be almost one or two arpens below the Sugar Loaf; that is, just as Mackay had fixed it in 1806.

Hunt's minutes, No. 2, p. 109, and No. 3, p. 85.

The people of Carondelet do not appear to have ever given or proven the north boundary of their common under any of the land laws of the United States.

This boundary being fixed by the inhabitants of St. Louis in the survey of and depositions upon their own commons, I think we may take for granted that they left their neighbors of Carondelet only that which was strictly belonging to them; and that the northern boundary of the latter's common, if no survey had as yet been made thereof, would be one and the same with the present southern boundary of the St. Louis common.

Diag. B.

Hunt's minutes, No. 2, p. 109, and No. 3, p. 85.

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2nd. The Secretary says: "If, therefore, that quantity (6,000 arp's) can be had without interfering with the rights of others which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off."

It is understood by the rights of others which had vested prior to the confirmation of the commons by the act of 13th June, 1812, to wit:

1st. Only the tract of Julien Chouquette, of 640 arpens, confirmed by the board on the 6th June, 1811, and the few village lots also confirmed by the same board.

Dock. of report of 15th April, 1840.

2nd. Or in addition to the claims just described, the tract of 35 arpens

Dock. of report of 15th April, 1840. of Gabriel Constant, surveyed in 1796, and confirmed by the act of 1816, and the village lots confirmed by the acts of 1812 and 1834.

3rd. Or, in addition to the 2 above classes, the tracts confirmed by the act of 4th July, 1836, but which were founded on concessions prior to the oldest mention in our records of the commons of Carondelet; that is, the declaration of Gen'l Trudeau, of 7th Dec., 1796, on the petition of J. B. Gamache, to wit:

A. of report of 15th April, 1840.

N	of rept 15th April 1840.		survey No.	3067,	Dec. No.	60,	Gabriel Cerré.	Concession dated	15	March,	1789.
R	do.	do.	"	"	3068,	"	" 279, Sophia Bolage,	"	"	3 June,	1796.
P	do.	do.	"	"	2993,	"	" 12, Pierré Delor.	"	"	6 Dec.	1796.
Q	do.	do.	"	"	3119,	"	" 170, J. B. Martigny.	"	"	25 April,	1783.
See transcript of decision.			"	"	3317,	"	" 144, J. B. Deschamps.	"	"	25 May,	1783.

687 Besides the three categories just mentioned, there are still within the Carondelet common other claims which I consider as being without the control of this office.

Accomp'g doc. C. 1st. A tract of 4 arpens square, granted to Louis Puyot on the 5th May, 1788; the only evidence of title is the concession. It was never acted upon by the board or the recorders, and is therefore not confirmed by any act of Congress. It

Accomp'g diag. A. was nevertheless surveyed by Mr. Brown in 1839, though I suppose merely at the request of the claimant.

2nd. A tract of 8 by 25 arpens, granted to Gabriel Constant on 6th Dec., 1796. It stands in the same condition as that of Puyot, and was laid down on plat A, as well as could be from the loose data in the concession.

3rd. The Gamache tract of 6 by 40 arpens. On the 4th Feb'y, 1850, Com'r Butterfield transmitted to Sur. General Clark a copy of his communication of same day to Messrs. Holmes and Whittlesey, of this city, containing his decision that Gamache's lot not being in the list returned by Recorder Hunt, under the 3rd section of the act of the 26th May, 1824, of all the lots confirmed by the same act, neither the Com'r nor the sur. gen'l to treat it as confirmed and entitled to an approved survey; and on the 20th March, 1850, Mr. Butterfield informed this office that, pursuant to the appeal of Messrs. Holmes and Whittelsey from the above decision of the 4th of Feb'y of same year, he had laid the matter before the Secretary of the Interior for his consideration and decision. Since then nothing has been received on the subject.

In fine, the United States has made a reservation of 1,702 acres within the common of Carondelet for the accommodation of Jefferson Barracks.

688 This tract has been surveyed under the direction of the War Department. As it was not laid down on the plats, sur. gen'l, on the 16th Dec., 1851, asked from your office an authenticated copy of the plat of the reservation; and on the 7th April, 1852, the Comm'r furnished this office with a diagram obtained from the Topographical Bureau, dated 26th Jan'y, 1852, and signed J. J. Albert, col. Corps. Top. Eng'r; but, on examination, this diagram was found to be an exact copy of that lettered X, which accompanied Gen'l Milburn's report of 15th April, 1840, on which the barracks tract is not laid, though the Secretary of War, in transmitting it to the Com'r, describes the same as being a copy of the map and field-notes of the 1,702 acres constituting the Jefferson Barracks tract near St. Louis.

Without prejudicing the nature of your instructions asked for concerning the points in this communication, I will also state what would in my opinion, if the Secretary's decision is to be carried into effect, be the best manner to do it in justice to all concerned, and in the view of

essening as much as possible the litigation that the consummation of the measure will necessar'y give rise to, because it will bring new interests in conflict with interests that the surveyor of Brown in 1834 seemed to have permanently fixed, and which have been vastly enhanced during this period of time.

1st. To retrace and connect the reservation of the 1,702 acres around Jefferson Barracks, for which purpose it will be necessary to furnish this office with the plat and field-notes (in order to identify corners) of the survey of that military tract by the War Department.

689 2nd. To enclose the blocks of the village of Carondelet surveyed by Mr. Brown in a single tract, by running the lines 1.2, 2.3, 3.4, 4.5, 5, 6, 1.

3rd. To consider the village tract and surveys No. 904 for Julien Chouquette; No. 2033 for Gabriel Constant; No. 3067 for Gabriel Cerré; No. 3068 for Sophia Bolage; No. 3993 for Pierre Delor; No. 3119 for John B. Martigny; and No. 3317 for Jno. B. Deschamps, as "rights of others which vested prior" to the act of 13th June, 1812, which confirmed the common of Carondelet.

4th. To obtain a decision from the Interior Department upon the claim of Gamache, so that, as the case may prove, it be surveyed in behalf of his representatives, or otherwise included in the 6,000 arpens to be laid off as common.

5th. To take no notice of the unconfirmed claims of Gabriel Constant and Louis Puyot, and then to begin the survey of the 6,000 arpens for the commons at its present N. E. corner, and follow Brown's northern, western, and eastern lines until two points are reached on the western boundary and the Mississippi River, between which a line run parallel with the present southern line of the common will leave north of it 6,000 arpens, exclusive of the military reserve and the tracts or parts of tracts also north of that line, which I have considered as valid interference with Brown's survey.

If the inhabitants of Carondelet have to submit to the decision of the 25th of Jan'y last, this construc' of it and its being carried will, I am satisfied, be the means of their sustaining the least injury thereby. As I had not any authority to call for documents from the parties, nor

690 was requested to report on the case, the above suggestions are made without regard to the request contained in the letter of Messrs. Holmes and Whittlesey of 22nd Feb'y last, or to the protest in that of James B. Walsh, esq., mayor of Carondelet, of the 23rd of same month, nor to the verbal arguments of interested persons, but only with the simple purpose of fulfilling the duties imposed upon this office by the instructions of the 5th Feb'y last. Your early attention to the matter is respectfully solicited.

I am, very respectfully, sir, your obt. servant,

D. A. SPAULDING,
Sur. General.

To Com'r of the General Land-Office, City of Washington.

NOTE.—The above letter was accompanied by the following papers:

A, a diagram of the Carondelet common, (see below.)
B, a copy of Mackay's survey of St. Louis commons, made in 1806, (see below.)
C, translation of a grant to Puyot, (see below.)
D, " " Constant, (see below.)
E, copy of letter from Messrs. Holmes and Whittlesey, of 22 Feb'y '53, to sur. gen'l, *see* to the Gamache claim, (see below.)

against the Secretary's decision.

☞ REMARKS.—Of the above papers, none of them threw any
691 new light on the subject. Di'g. A is the same as the former ones, except that it shows the village as surveyed by Brown, all the position of the claims of Gamache, Puyot, and Deschamps, not before given; for which reason I have added it. See p. 71.

(Here follows map, marked page 691.)

692 *Remarks on plat X, (see p. 45 of this book.)*

It will be seen by the plat D that Elias Rector reports the west boundary of the common to be 437.50 chains, which is equal 150 arpens; whilst the said line, according to Mr. Brown's operations, as represented on this plat, is 473.17 chains, (being 201.36 chains with Alvarez' line and 271.81 chains beyond Alvarez,) which exceeds the 150 arpens by 35.67 chains, or something more than 12 arpens. The line a b on this plat is drawn 150 arpens from the field lands, according to Brown's measure, and cuts off about 1,170 acres.

The copy of the instructions to Mr. Brown, marked F, shows that he was not required to run the distance of 150 arpens on the W. boundary, but to connect the lines of the common, as already surveyed, with the adjoining public and private surveys, and if the S. W. corner could not be found, to re-establish it at the intersection of the southern and western boundary-lines. The S. W. corner and the lower corner on the river, also the western and southern boundary-lines as surveyed by Elias Rector, were easily found and identified by Mr. Brown.

Under the act of Congress of the 26th of May, 1824, supplemental to the law of the 13 of June, 1812, the rep's of John B. Gamache, who had been denied a concession south of the common-fields by Gov'r Trudeau, availed themselves of the very liberal practice of the recorder under the said act of 1824, and claimed a portion of the same land refused by Trudeau as an out-lot adjoining the village of Carondelet, containing 6 arpens in front by 40 in depth, bounded northwardly by the common-field, eastwardly by the Mississippi, (leaving a tow be-
693 tween it and the river,) south by an out-lot claimed by the legal rep's of Gabriel Constant, (Lalmond,) sen'r, and west by the land formerly of Antoine Reihl; and they proved the lands as above designated to have been inhabited, cultivated, and possessed, as required by the said acts of 1812 and 1824.

This claim of Gamache, under the laws of 1812 and 1824, has been surveyed as represented on this map by black dotted lines.

Under an act of the legislature of the State of Missouri, passed in pursuance of the act of Congress approved the 27th of Jan'y, 1831, the corporate authorities of the town of Carondelet laid off into small tracts the land within Brown's survey of the Carondelet common, (except a portion around Jefferson Barracks,) and disposed of the same, or the greater part thereof, to private individuals.

WILLIAM MILBURN,
Surveyor of the Public Lands
in the States of Illinois and Missouri.

SURVEYOR'S OFFICE,
St. Louis, 15th April, 1840.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, Nov. 15th, 1853.

It is hereby certified that the letters, documents, and diagrams on the
›regoing pages, (1 to 72, inclusive, except page 70, which is blank,) and
ated as follows, to wit:

Surveyor-General Milburn to A. L. Magenis, dated 18th May, 1839.
Same " Gen'l Atkinson " 1 Aug't, 1839, & doc. B.
Commissioner Whitcomb " Sur. Gen'l Milburn " 24 Sep., 1839, & rep's No. 244 of Solicitor Burchard with same.
Surveyor-General Milburn to N. Pope, of 5th Dec. 1839.
Same " F. R. Conway " 14 " 1839.
Same " Com'r Whitcomb, 29 Feb'y, 1840.
Same " same, the report of 15th April, 1840; and

Also the following documents and parts of documents accompanying
id report, the parts in French and Spanish being omitted, as explained
the margin in red ink, to wit:
Documents A, B, C, D, E, F, G, (H omitted,) I, K, L, M, N, O, P, Q,
S, T, U, V, (in part,) (W omitted,) X and Y, (in part, as explained;)
so,
Com'r Shields to Sur. Gen'l Conway, of 1st Sept., 1845, with copy of
›m'rs letter of same date to Alex'r Kayser; also,
Com'r Wilson to Sur Gen'l at St. Louis, of Feb'y 5, 1853, with the
cision of Secretary Stuart on the Carondelet-common case, dated 25th
n'y, 1853; and finally,
Sur. Gen'l Spaulding to Com'r Wilson, of 23rd March, 1853, with di-
ram A, accompanying same, are true and correct copies of the origi-
ls and parts of the originals, as above explained, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

And afterwards, at a term of the supreme court, being the March term, A. D. 1873, the following proceedings were had in
d cause, to wit:

Death of plff. suggested, & substitution of trustees as plffs.

WEDNESDAY, *March* 19*th*, 1873.

WILLIAM M. MCPHERSON, RESP.,
vs.
HN EPES COWAN ET AL., APPEL'TS.

Now come the attorneys for the respondent herein, and suggest to the
rt that the said William M. McPherson has departed this life since
granting of the appeal herein, and also come Charles Parsons, John
Gibbons, and John R. Shepley, trustees under the will of said de-
sed, and file herewith a duly certified copy of said will, and enter
eir appearance to this suit as the legal representatives of said William
McPherson, deceased, and by consent and agreement of parties are
bstituted as parties plaintiff herein, and are allowed to prosecute in
s place.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Assignment of errors filed.

THURSDAY, *March 20th*, 1873.

WILLIAM M. MCPHERSON'S TRUSTEES, RESP., *vs.* JOHN EPES COWAN ET AL., AP. } Assignment of errors filed.

Which assignment of errors is in words and figures following, to wit:

696 *Assignment of errors.*

In the supreme court of Missouri.

CHARLES PARSONS, JOHN F. GIBBONS, & John R. Shepley, trustees under the will of Wm. M. McPherson, deceased, respondents, *vs.* JOHN EPES COWAN ET AL., APP'L'TS. } No. 83, March term, 1873.

And now again comes all the defendants, appellants, except Cowan, viz, Colman, Niles, Hogan, and the Chartrands, by counsel, and for errors assign the following:

First. The court erred in excluding proper and legal testimony and evidence offered on the part of the defendants.

Second. The court admitted illegal and improper evidence for the complainants, and admitted evidence to outweigh testimony to obtain pre-emption patent when McPherson appeared before the Land Department as a contestant and had ample opportunity to have produced all the evidence brought before the court.

Third. The judgment and decree of the court is against law and equity and good conscience, against the evidence and weight of evidence.

Fourth. For want of equity, and upon motion made by defendants, complainants' bill should have been dismissed.

Fifth. The evidence and testimony in the case fully and conclusively sustain all and every of the denials, averments, and allegations contained in the answer of the defendants below, and fully controverted and disproved each and every averment and allegation contained in complainants' bill, and the decree and judgment should have been that complainants' bill be dismissed.

Sixth. It was error for the court below to hold or exercise any power or authority or jurisdiction to vacate the patent granted by the
697 United States to the heirs of Thomas Chartrand, sen'r, dec'd, on a pre-emption fully proved and established upon evidence adjudicated by the Land Department.

Seventh. It was error for the court below to hold that the State location and patent of William M. McPherson was valid, when in fact and in law it was a nullity as against the pre-emption of Thomas Chartrand, sen'r, deceased, and as against the United States, who held the legal title to the land until the issue of the patent of 1866.

Eighth. It was error for the court below to hold that the title of McPherson by force of the State location and patent under the acts of Con-

gress and the statutes of Missouri was a better title than that vested in the heirs of Thomas Chartrand, sen'r, deceased, by virtue of the pre-emption under the acts of Congress of 1839 & 1840, and the decision of the register and receiver, and of the Commissioner of the General Land-Office, and of the Secretary of the Interior, under the acts of Congress which vested the title of the United States in the heirs of Thomas Chartrand, sen'r, deceased. And the court below further erred in deciding against the validity of said acts of Congress, and against the validity of said decisions of the officers of the Land Department of the United States, and against the validity of the patent to said heirs of said Thomas Chartrand, sen'r, deceased.

Ninth. The court below further erred in deciding against the validity of the patent of the United States to the heirs of Thomas Chartrand, sen'r, deceased, and in passing upon the power of the United States without the United States being a party, in doing which the court below had no jurisdiction.

Tenth. The court erred in holding that the burden of proof was on the heirs of Thomas Chartrand, senior, deceased, to establish be-
698 fore the court the right to the patent of the United States, when in fact and in law and in equity the burden of proof was upon the complainants to show that said pre-emption *of* patent issued to said heirs and legal representatives of Thomas Chartrand, sen'r, deceased, was obtained by fraud, imposition, and false swearing before the Land Department, or by mistake, or by gross misconduct of the officers thereof. And the court further erred in passing upon the sufficiency or insufficiency of the evidence before said Land Department, the said Department having decided, after full contest and hearing between said parties complainants and defendants, and under their said decision issued the patent of July, 1866, to the heirs of said Thomas Chartrand, sen'r, deceased.

Eleventh. The court below erred in holding that there was any equity in complainants' bill, and the decree of the court should have been for the defendants instead of complainants, and complainants' bill should have been dismissed by the court below with costs.

BRITTON A. HILL,
Atty. for App'l'ts.

SAME RESP'D'TS.
vs.
SAME APP'L'TS.

And the said John Epes Cowan, by Whittelsey, his attorney, comes & assigns the same errors as above assigned by the said other defendants appellants.

WHITTELSEY, *Atty.*

699 And now at this day come the appellees in the above cause and say that in the records and proceedings in said cause there is no error, and therefore they pray that the judgment in said cause may be in all things affirmed.

GLOVER & SHEPLEY,
For Appellees.

Which said assignment of errors is endorsed as follows, to wit:

Assignment of errors. B. A. Hill for app'l'ts, except Cowan; C. C. Whittelsey for Cowan, app'l't. Filed March 20, 1873. Francis Miner, clk. Pr. Jos. F. Baier, D. C.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Argued and submitted.

WILLIAM M. MCPHERSON'S TRUSTEES, RESP'D'TS.,
vs.
JOHN EPES COWAN ET AL., APP'L'TS.

Now again come the parties aforesaid, by their respective attorneys, and after argument herein submit this cause to the court.

And afterwards, at the same term of said court, the following judgment was rendered in said cause, to wit:

700 *Judgment.*

WEDNESDAY, *April* 30, 1873.

JOHN R. SHEPLEY, CHARLES PARSONS, & John F. Gibbons, trustees under the will of William M. McPherson, dec'd, respondents,
vs.
JOHN EPES COWAN, SAMUEL M. COLEMAN, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, F. Chartrand, Paschal F. Chartrand, & Antoine T. Chartrand, appellants.
} Appeal from St. Louis circuit court.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis circuit court be reversed, annulled, and for naught held and esteemed. That the said appellants be restored to all things which they have lost by reason of the said judgment. That the said respondents take nothing by their suit in this behalf, but that their petition herein be dismissed. That the said appellants go hereof without day, and recover of the said respondents their costs and charges herein expended. Opinion filed.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Writ of error allowed and points ordered to be certified.

WEDNESDAY, *May* 7, 1873.

JOHN R. SHEPLEY ET AL., TRUSTEES, &C., OF William M. McPherson, resp.,
vs.
JOHN EPES COWAN ET AL., AP.

701 Now again come the respondents, by their attorneys, and file a writ of error herein from the Supreme Court of the U. S., a citation, and a bond in the sum of one thousand dollars; and the court allows said writ and approves the bond. And the court orders that a memorandum of the points ruled upon in this cause be certified and made a part of the record herein.

Which order and memorandum and bond are in the words and figures following, to wit:

Order and memorandum.

In the supreme court of Missouri, March T., 1873.

JOHN R. SHEPLEY, JOHN F. GIBBONS, & Charles Parsons, devisees and trustees under the will of William M. McPherson, plaintiffs, respondents,
against
JOHN EPPES COWEN, SAMUEL M. COLEMAN, Michael Chartrand, & others, appellants.

It is hereby certified that the above cause came on and was regularly heard and decided in the supreme court of Missouri at the present March term thereof, A. D. 1873, upon the appeal of the said defendants from the judgment of the circuit court of St. Louis Co., Mo., that the following questions in the said cause did arise and had to be decided by this court: that is to say, whether at the time of the selection of the land in dispute by the governor of Missouri, and the patent to McPherson, said land was reserved from sale under a law of the United States; whether said land was such as could be selected by the State of Missouri in satisfaction of the grant by Congress; whether the proceedings on the part of the State of Missouri to select said land were valid under the laws of the United States; whether said McPherson or the State of Missouri acquired any right or title to said land by virtue of the
702 laws of the United States; whether the certificate of John Wilson, Com'r Gen'l Land-Office of U. S., in respect to the selection of said land, dated June 25, 1855, was a valid act under said laws; whether said certificate was effective under said laws to confer any right upon said State or said McPherson; whether the said selection of said land by the said State as made was null and void; and that the said supreme court of Missouri did decide and adjudge that said land was reserved from entry and sale from the passage of the act of June 13, 1812, down to the decision of the Supreme Court of the United States of the case of Carondelet vs. St. Louis, December term, 1861, (1 Black, 179;) that the said land was not such as could be legally selected under the laws of the United States in satisfaction of the grant to Missouri by act Congress Sept. 4, 1841; that the proceedings on the part of the State of Missouri to select said land were null and void; that neither said State or said McPherson took any title thereby; that said certificate of the Commissioner of the General Land-Office was null and void; that the claim of McPherson's devisees, standing on his documentary evidence derived from the United States, had no standing in court; that the title of the heirs of Chartrand under the laws of the United States was a better title than that under McPherson under the laws of the United States. And, so holding and deciding, the supreme court of Missouri reversed the judgment of the said circuit court and dismissed the petition of said McPherson's devisees & trustees; all which is to be ordered of record as the reason for the said decision of the supreme court of Missouri.

Which said order is endorsed as follows, to wit: "Order certifying points ruled upon the laws of the United "

703 *Bond.*

Know all men by these presents that we, John R. Shepley, Charles Parsons, and John F. Gibbons, of the city and county of St. Louis and

State of Missouri, as principal, and Samuel T. Glover and N. Myers, of the same county and State, as sureties, are held and firmly bound unto John Eppes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand in the full and just sum of one thousand dollars, to be paid to the said John Eppes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand, their heirs, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this seventh day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately at the March term, A. D. 1873, of the supreme court of the State of Missouri, in a suit depending in said court between John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees under the will of William M. McPherson, deceased, plaintiff, and John Epes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand, defendants, judgment was rendered against the said John R. Shepley, Charles Parsons, and
704 John F. Gibbons, devisees and trustees as aforesaid, and the said John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees as aforesaid, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Epes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., the second Monday of October next:

Now the condition of the above obligation is such, that if the said John B. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees as aforesaid, shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

JOHN R. SHEPLEY. [SEAL.]
JNO. F. GIBBONS. [SEAL.]
CHARLES PARSONS. [SEAL.]
SAMUEL T. GLOVER. [SEAL.]
NATH'L MYERS. [SEAL.]

Approved by supreme court.
WASH. ADAMS, *P. J.*

705 *Opinion of the court.*

In the supreme court of the State of Missouri, March term, 1873.

W. M. McPherson's executors and trustees, respondents, *vs.* John Epps Cowan and others, appellants. } Appeal from the St. Louis circuit court.

OPINION OF THE COURT.

This was an action in the nature of a bill in equity, commenced by

William M. McPherson in April, 1870, and after his death revived in the names of his executors and trustees under his will.

The plaintiff claimed that he was the legal owner, in fee, of fractional section 9 in township 44 of range 7 east, in the district of lands subject to sale at St. Louis, Mo., which fractional section of land contained 37.40 acres.

The object of this action was to correct errors in law and fact by the officers of the Land-Office Department of the United States Government, in allowing the heirs at law of Thomas Chartrand, sr., deceased, to enter the land in dispute under the pre-emption laws and vest title in plaintiff.

This fractional section of land is situated between Carondelet and St. Louis, and under the acts of Congress of 13th of June, 1812, and the 26th of May, 1824, granting commons to the then villages of St. Louis, Carondelet, &c., Carondelet claims this piece of land as a part of its commons, and under these acts it became the duty of the President of the United States, in the execution of the laws thereof, to cause the commons as claimed to be reserved from entry or sale.

706 The facts and proofs in this case show that the Carondelet commons, including the land in dispute as part thereof, were thus reserved from entry or sale from the time of the passage of the act of Congress of the 13th of June, 1812, down to the decision of the Supreme Court of the United States, at December term, 1861, in the case of Carondelet vs. St. Louis, (1 Black, 179,) when for the first time it was released from the claim of Carondelet for commons by the decision in that case. The Land Department of the United States Government had caused proper entries on the books of that Department at the local land-office in St. Louis to be made of this reservation, and this reservation was thus proclaimed to all persons desiring to appropriate any part of these commons, including the land in dispute. So when offers were made, as they were in several instances, to locate pre-emptions of this fractional section of land, they were uniformly refused by the local land-officers on account of this reservation, and the acts of the local land-officers were approved by the Land-Office Department at Washington City. So there can be no dispute that the land in question was reserved from sale or entry up to the Decem. term, 1861, of the Supreme Court of the United States.

By an act of Congress, entitled "An act to extend pre-emption rights to certain lands therein mentioned," approved March 3, 1853, it was provided "that any settler who has or may hereafter settle on lands heretofore reserved on account of claims under French, Spanish, or other grants which have been, or shall be hereafter, declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act and the act of fourth of September, 1841, entitled 'An act to appropriate the proceeds of the public lands and to grant pre-emption-rights,' after the lands shall have been released from reservation, in the same manner as if no reser-

707 vation existed." (10 U. S. Statutes at Large, 244.)

After the decision of the Supreme Court of the United States in Carondelet vs. St. Louis, the heirs of Thomas Chartrand, sr., deceased, were allowed by the Land Department to prosecute the claim of their ancestor as pre-emptor on this fractional section of land, and after a contest, lasting for several years, before the Land Department, between these heirs and the plaintiff, a pre-emption was granted to them in June, 1866, and a patent issued thereon in July, 1866.

A decree was rendered at special term in favor of the plaintiff, which was affirmed at general term.

The plaintiff's standing in court first demands our attention, for unless he has title himself, he has no right to question the claims of the heirs of Chartrand.

He assumes to stand here on a title derived from the State of Missouri, under the act of Congress of September 4, 1841, (5 U. S. Statutes at Large, p. 453,) entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights." Section 8 of this act provides "that there shall be granted to each State specified in the first section of this act five hundred thousand acres of lands for purposes of internal improvements," &c. The State of Missouri is one of the States specified in the first section. The 8th section also points out how the lands are to be selected, and provides that the selections shall be made within the limits of the State "on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States," &c.

The general assembly of Missouri passed acts accepting the five hundred thousand acres, and providing for its selection. (See said
708 acts March 27, 1843, p. 77; February 2, 1847, p. 88; March 13, 1849, p. 63; March 10, 1849, p. 61–65.)

December 15, 1849, the governor of Missouri selected for plaintiff fractional section 9, township 44, of range 7, that being the land in dispute, containing 37.40 acres.

The selection of this tract by the governor was approved by the Secretary of the Interior of the United States, January 17, 1850, and a patent for this fractional section was issued by the governor of Missouri to McPherson, reciting the foregoing facts, and granting the land to McPherson and his heirs, on the 27th day of February, 1850. This is the only paper title the plaintiff pretends to have for this land. It is obvious that the land in dispute being at that time reserved from sale, was not of the character of the lands intended to be granted by the 8th section of the act of Congress above referred to, and was not embraced in that section. That being the case, this selection, in my judgment, was perfectly null and void, and no title passed thereby to the State of Missouri, and the State could pass none to the plaintiff.

But, independent of these considerations, the 8th section of the act of Congress of September 4, 1841, was not a present grant. It was not intended that any title should pass merely by force of the act itself, and the selections to be made thereunder. The words are "there shall be granted," &c., and not a grant in presenti. These words import that some other act is to be passed by Congress before the General Government parts with the fee-simple title. This point was expressly decided by the Supreme Court of the United States in Foley vs. Harrison et al., 15 How., 447. Speaking of this very act, the court says: "It could not have been the intention of the Government to relinquish the exercise of power over the public lands that might be located by the State. The same system was to be observed in the entry of lands by the State as by individuals, except the payment of the money; and
709 this was necessary to give effect to the act and to prevent conflicting entries." The decisions of the Supreme Court of the United States in regard to acts of Congress ought to be looked to by the State courts as controlling authority. Whatever may be the rule in cases peculiarly cognizable by the State courts, they must yield to that court where the subject-matter in contest makes it the only court of last resort.

The case of Foley vs. Harrison et al. was decided at the December term, 1853. And afterwards, on the 3d of August, 1854, Congress passed "An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them." It consists of a single section, which reads as follows: "That in all cases where lands have been or shall hereafter be granted by any law of Congress to any one of the several States or Territories, and when said law does not convey the fee-simple title of such lands, or require patents to be issued therefor, the lists of such lands which have been or may hereafter be certified by the Commissioner of the General Land-Office, under the seals of said Office, either as originals or copies of the originals or records, shall be regarded as conveying the fee-simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby." (10 U. S. Statutes at Large, 346.)

This act was, no doubt, intended by Congress as the means of passing the title in fee of the lands that had been selected by the several States under the act of September 4, 1841.

710 The record in this case shows that McPherson after the passage of this act procured from the Commissioner of the General Land-Office, under his seal of office, the following certificate:

"GENERAL LAND-OFFICE, *June 25th*, 1855.

"I, John Wilson, Commissioner of the General Land-Office, do hereby certify that the State of Missouri selected, under the 8th section of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," approved September 4th, 1841, fractional section nine, in township forty-four north, of range seven east of the fifth principal meridian, and that said selection has been approved to said State according to law.

"In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

{ SEAL OF U. S. GEN'L LAND-OFFICE. }

"JOHN WILSON,
"*Commissioner of the General Land-Office.*"

If this certificate was issued for the State of Missouri, and as a muniment of its title to the land in dispute, under the act of August 3, 1854, it must be construed in connection with that act and the 8th section of the act of September 4, 1841, and viewed in this light it demonstrates the nullity of the selection of the land in dispute, as that land had been reserved from sale, and was not embraced in section 8, and such selection is declared by the act of August the 3, 1854, to be "perfectly null and void," and that no right or title shall be conveyed thereby.

711 But if it be conceded that the certificate in question conveyed a title to the State of Missouri on the 25th of June, 1855, would such title pass to McPherson by virtue of his patent issued in 1850?

The governor in issuing the patent could only do so in the execution of a statutory power, and the only title that could be conveyed was such as existed in the State at that time.

It is not a deed of conveyance purporting to convey an estate in fee-

simple absolute, but it recites the facts constituting the title of the State, and conveys that title and no other. An after-acquired title by the State would not pass under that patent if, indeed, there could be any conveyance made in any form by a sovereignty that could have the effect of passing to the grantee a title subsequently acquired.

I do not mean to be understood as intimating any opinion on this abstract question. I am, however, clearly of the opinion that no after-acquired title by the State could pass to McPherson under this patent, unless there be some statutory regulation to that effect, and none has been refer'ed to, and I am not aware that any exists.

In the City of Carondelet vs. McPherson, (20 Mo. R., 192,) it was assumed, without investigation, that the title of the General Government to this fractional section of land had passed to the State of Missouri under the act of September 4, 1841, and that the patent from the State to McPherson conveyed a complete title to him. The attention of the court in that case was not called to the points of objection raised here, and therefore the intimation of Judge Gamble, to the effect that a complete title had been conveyed to McPherson, can have no authoritative
712 force in this contest; and I merely refer to that case to show that it has not been overlooked.

There seems to be no light in which the facts of this case can be viewed so as to give the plaintiff a standing in court. He claims title by virtue of the statute of limitations.

The statute of limitations in land contests is a statute of repose, and not only bars the title of the real owner, but transfers such title to his adversary; and, therefore, if the pre-emption claimed by the heirs of Chartrand had been completed and allowed for ten years, so that they could have maintained an action of ejectment on it against McPherson during all that time, their right would have been barred, and an affirmative right thereto would have vested in the plaintiff. Such affirmative title or right, so created by adverse possession before the issuance of the patent by the United States, ought to be a sufficient transfer of the equity to authorize a decree for the legal title after the emanation of the patent.

It would be no interference with the primary disposal of the soil by the General Government, any more than in a case where the pre-emptor himself had transferred his equity before the issuance of the patent. In either case the patentee ought to be held as a naked trustee for the person holding the equity, whether transferred to him by contract or by the statutory bar. But there was no statutory bar in this case. The Chartrand pre-emption was not proved up or completed till June, 1866. The plaintiff's possession prior to this date could confer no title. The statute does not run against the Government, " nullam tempus occurrit regi."

As these views dispose of this case, it is unnecessary to con-
713 sider the other points so ably discussed by the learned counsel on both sides in making and repelling assaults on their respective positions.

The judgment must be reversed and the petition dismissed. Judge Sherwood absent. The other judges concur.

WASH. ADAMS.

Since filing the foregoing opinion the attention of the court has been called to section 37 of chapter 143 of the General Statutes, 1865, by which an after-acquired title by the State would pass to McPherson under his patent of 1850. But under the view taken by the court the State

never acquired any title whatever to the land in dispute, and therefore none passed to McPherson.

The judgment therefore of this court as rendered must stand.

The other judges concur.

WASH. ADAMS.

And afterwards, to wit, during the vacation of said court, the following further proceedings were had in said cause, to wit:

714 *2nd writ, citation, & bond filed.*

SATURDAY, *January* 17, 1874.

JOHN R. SHEPLEY ET AL., TRUSTEES UNDER the will of William M. McPherson, deceased, respondents,
vs.
JOHN EPES COWAN ET AL., APPELLANTS.

Writ of error from the Supreme Court of the United States. Citation and bond approved by the honorable Wash. Adams, presiding judge, filed.

Which bond is in the words and figures following, to wit:

2nd bond.

Know all men by these presents that we, John R. Shepley and Charles Parsons, of the city and county of St. Louis, and State of Missouri, as principals, and Samuel T. Glover and N. Myers, of the same county and State, as sureties, are held and firmly bound unto John Epes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix T. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand in the full and just sum of one thousand dollars, to be paid to the said John Epes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand, their heirs, administrators, or assigns, to
715 which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 15th day of January, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at the March term, A. D. 1873, of the supreme court of the State of Missouri, in a suit depending in said court between John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees under the will of William M. McPherson, deceased, plaintiffs, and John Epes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand, defendants, judgment was rendered against the said John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees as aforesaid, and the said John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees as aforesaid, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Epes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine T. Chartrand, citing and admonish-

ing them to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., the second Monday of October next:

716 Now, the condition of the above obligation is such that if the said John B. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees as aforesaid, shall prosecute said writ to effect, and answer all damages and costs if they fail to made good their plea, the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

JOHN R. SHEPLEY. [SEAL.]
CHAS. PARSONS. [SEAL.]
S. T. GLOVER. [SEAL.]
NATH'L MYERS. [SEAL.]

Approved by me.

WASH. ADAMS,
Presiding Judge of the Supreme Court of Missouri.

STATE OF MISSOURI, *sct:*

I, Josiah Thornburgh, clerk of the supreme court held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true, and complete transcript of all the record and proceedings had in the above-entitled cause, and a full, true, and complete copy of the opinion of the court delivered therein, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in the city of St. Louis, this seventeenth day of January, A. D. 1874.

[SEAL.]

J. THORNBURGH, *Clerk*,
Per JOS. F. BAIER, *D. C.*

(Indorsement on cover:) No. 141. John R. Shepley, Charles Parsons, and John F. Gibbons, devisees and trustees under the will of William M. McPherson, dec'd, plaintiffs in errors, vs. John Eppes Cowan, Samuel M. Coleman, Samuel N. Niles, Edward B. Hogan, Michael Chartrand, Joseph A. Chartrand, Felix F. Chartrand, Paschal F. Chartrand, and Antoine F. Chartrand. Missouri sup. ct. Filed 27th January, 1874.

IN THE SUPREME COURT

OF THE UNITED STATES.

December Term, 1875.

JOHN R. SHEPLEY, CHARLES PARSONS, AND JOHN F. GIBBONS, Executors of Wm. M. McPherson, Deceased,

Plaintiffs in Error,

vs.

JOHN EPPES COWAN, SAMUEL M. COLEMAN, SAMUEL N NILES, EDWARD B. HOGAN, MICHAEL CHARTRAND, PASCHAL F. CHARTRAND, JOSEPH A. CHARTRAND, FELIX F. CHARTRAND, AND ANTOINE F. CHARTRAND,

Defendants.

Brief & **Statement of the Case by Glover & Shepley,**

SOLICITORS FOR MCPHERSON'S EXECUTORS.

C. E. WARE & CO., BOOK AND JOB PRINTERS.

IN THE SUPREME COURT

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Plaintiffs in Error,

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JOHN EPPES COWAN, SAMUEL M. COLEMAN, SAMUEL N. NILES, EDWARD B. HOGAN, MICHAEL CHARTRAND, PASCHAL F. CHARTRAND, JOSEPH A. CHARTRAND, FELIX F. CHARTRAND, AND ANTOINE F. CHARTRAND,
Defendants.

Statement of the Case by Glover & Shepley,

SOLICITORS FOR MCPHERSON'S EXECUTORS.

January 24, 1870, William M. McPherson filed his petition in the Circuit Court of St. Louis county, Missouri, setting forth the following facts: That an act of Congress entitled "An act to appropriate the proceeds of the sales of public lands, and to grant pre-emption rights," approved March 4, 1841, by its 8th section, granted to the State of Missouri 500,000 acres of land for purposes of internal improvement, selections to be made in such manner as the

Legislature of Missouri should direct. (See Vol. 5, U. S. Statutes at large, p. 453.)

That this grant was accepted by Missouri, March 10, 1849. (Session Acts, pp. 64, 65.) That on the 15th of December, 1849, the Hon. Austin A. King, Governor of Missouri, notified the Secretary of the Interior of the United States, that McPherson had selected on behalf of the State of Missouri the land in question, viz: Fractional section 9, township 44, range 7, east in the district of lands subject to sale at St. Louis, Missouri. That said tract contained only 37.40 acres, and the Governor at the time relinquished to the United States all surplus, and accepted said fractional section 9, in lieu of 320 acres; all which would appear by exhibit No. 1, filed with said petition. That said tract of land was situated in St. Louis county, Missouri, and the official plat of the survey thereof was on file in the office of the Register of Lands in the proper district on and since April, 1841. That the selection of said land as above mentioned, was approved by the proper authorities of the United States as would appear by exhibits 1, 3, 4, 5, 6 and 7 of the petition.

That on the 26th day of February, 1850, the State of Missouri issued to McPherson a patent for said land, which was duly recorded in St. Louis county, Missouri, March 26, 1851, as would appear by exhibit No. 8.

That in 1847, the plaintiff McPherson took possession of said land and had since held it actually and exclusively. That the plaintiff was advised and believed that his title was valid in law and equity, but the said defendants had combined and confederated with intent to injure and harrass him, and had set up and claimed to have acquired a valid adverse right and title to said land by pre-emption, under the laws of the United States. That said pretended right was acquired under circumstances stated in the petition: That is to say sometime in 1850, the children and heirs at law of Thomas

Chartrand, Sr., deceased, claimed in right of their father a pre-emption on said tract.

That in fact neither said Thomas Chartrand, Sr., nor his children or heirs nor any one of them ever had any pre-emption right to any part of said land. That they made a clamorous assertion of their pretended right from time to time, took many *ex-parte* affidavits and depositions, and prosecuted their claim to such pre-emption right before different officials of the land department of the United States, till June 4th, 1866, when the Hon. James Harlan, Secretary of the Interior decided that said children and heirs were entitled to pre-empt said land by virtue of the acts of Congress of 1838 and 1840 granting pre-emption rights to settlers on the public lands; that in accordance with said decision, said Joseph, Michael, Felix, Antoine and Paschal received a patent from the United States dated July 21st, 1866, for the whole of said fractional section; that the defendants all claim some interest in said land under said pretended pre-emption right and falsely assert to the world that said pretended pre-emption right is a better title than the plaintiff's. The plaintiff's petition further stated that said pretended pre-emption claim and patent thereon was a cloud on plaintiff's title and had very seriously injured plaintiff's title and the value thereof, and would continue to do so until by proper judicial decision pronounced null and void as against the plaintiff; that defendants had falsely assisted their claim until many persons believed the plaintiff had no title to said land; that the plaintiff procured from the Land Department of the United States, a transcript of all the evidence laid before it in behalf of said claim to a pre-emption right and of all proceedings in respect to it: said transcript was filed with plaintiff's petition and marked exhibit No. 9.

That said Land Department never had before it any evidence of said pre-emption right. That in said decision in favor of said pre-emption right said department committed grave errors of law and fact. That there was no proof that

Thomas Chartrand, Sr., complied with any act of Congress granting pre-emptions. That he was not on the 22d day of June 1838 an actual settler and house-keeper by personal residence on said tract, or in possession thereof. Nor was he such for four months preceding the last named date.

That he never made any settlement or improvement on said land inperson or otherwise, that he never was a settler on said land or any other public land.

That he never had a dwelling on any public land; nor did he ever cultivate the land in suit, having a dwelling on another tract; nor did he erect any dwelling house on the land in suit, or improve or inhabit it for the time or in the manner required by the pre-emption laws.

That said Thomas Chartrand, Sr., never made any proof, nor offered to make any proof of improvement or settlement on said land to the Register and Receiver of any land office. Nor did he ever file with the Register any written statement describing said tract ot land as settled on or claimed by him; or declaring his intention to claim said land by pre-emption right, or offer to do so; nor did he make any proof or affidavit in respect to said tract, nor did he ever pay or offer to pay any money for said land under any law of the United States.

That the proceedings of said Land Department, in the whole matter of said pre-emption claim by the children of said Thos. Chartrand, Sr., were erroneous, illegal and unjust. That the officers thereof received and considered *ex-parte* affidavits of Amable Chartrand, Thomas Watson, John Eppes Cowan, Margaret Houston and Antoine Motier, which were not only incompetent, being *ex-parte*, but filled with mere opinions or suspicions of affiants, hearsay, and other illegal matter. That other matter was used as evidence before said Land Department; but in all of it there was no legal evidence of any pre-emption right in Thomas Chartrand, Sr. That said patent to the heirs of Thomas Chartrand, Sr., was obtained by illegal and incompetent testimony,

by collusion and fraud, and by imposition practiced on said Department. That Joseph A. Chartrand, Michael Chartrand, Felix Chartrand, Antoine Chartrand and Paschal Chartrand, prior to March 1863, each conveyed to the defendant, Cowan, an undivided half of his interest in said land for the consideration of one dollar. That on the 2d day of April, 1864, Paschall and Antoine Chartrand agreed to give the defendant Coleman, their remaining half to prosecute their claim to the said pre-emption, and on the 26th November, 1865, said Paschall made a deed to said Coleman accordingly. That said deed recited a consideration of 3,000 dollars; but nothing was really paid. In August, 1866, Joseph A. Chartrand, Michael Chartrand and Felix Chartrand conveyed their remaining interest in said land to the defendant Coleman in consideration of his prosecuting their claim for four years. Thomas Chartrand, Jr., conveyed his part of the land to plaintiff.

That Coleman conveyed a small lot of 50 feet to the defendant Niles without any consideration; said Coleman also conveyed to the defendant Hogan the south half of the tract in November, 1866, without consideration; that all said deeds were made with full notice in the grantees of all the facts mentioned in the plaintiff's petition. The prayer of the petition was to vest in the plaintiff all rights acquired by the defendants under the Chartrand patent, and for general relief. (See petition pp. 3 to 7 inclusive.) The answer of Cowan is found on pp. 7, 8 and 9 of the record. The answer of the other defendants will be seen on pp. 9, 10 and 11 of the record. The plaintiff's replies are found on page 11.

The Missouri code in force at the date of these proceedings, established the following rules of pleading and evidence:

"Every material allegation of the petition not controverted by the answer, and every material allegation of new matter contained in the answer, not controverted by

the reply, shall for the purposes of the action be taken as true." (2 Wagner's Statutes, 1870, p. 1,019, § 36.) "The answer of the defendant shall contain a *specific denial* of each material allegation of the petition controverted by defendant, or of any knowledge or information thereof sufficient to form a belief," (2 Wagner's Statutes, p. 1,015, § 12.

THE PLAINTIFF'S EVIDENCE IN SUPPORT OF HIS PETITION, WAS AS FOLLOWS:

I. An act of the Legislature of the State of Missouri, entitled "An act to authorize the Governor to dispose of the lands granted to the State of Missouri by an act of Congress, approved Sept. 4, 1841, which have not been selected." Approved, March 10, 1849, viz:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"1. That the Governor is hereby authorized to dispose of so much of the five hundred thousand acres of land granted to the State of Missouri by the act aforesaid, as remains to be selected, at private sale, provided that none of the land shall be sold for less than one dollar and twenty-five cents an acre.

"2. Any person wishing to purchase such land, may apply to the Governor, and shall, on payment in full of the purchase money, receive a certificate signed by the Governor and countersigned by the State Treasurer, acknowledging the receipt of the money, and authorizing such person, his heirs or assigns, to locate the quantity of land so purchased, in conformity with the provisions of the act of Congress aforesaid.

"3. The persons making such location, shall inform the Governor of the land selected, who shall notify the Secretary

of the Treasury of the United States that such selection has been made for the State of Missouri, and if approved by the Secretary aforesaid, the Register of Lands shall issue a patent to the legal holder of such certificate in like manner as is now provided by law.

"4. If the holder of such certificate shall select a fraction or tract containing less than 320 acres, it shall be the duty of the Governor, at the request of the holder of such certificate and upon payment in full for 320 acres, to relinquish the surplus to the United States, and accept such fraction, or smaller tract, instead of the 320 acres, which request shall be in writing and duly acknowledged before the clerk of some Court of Record, and filed in the office of the Register of Lands, and upon the filing of the same, the Governor shall relinquish the surplus to the United States, and if approved by the Treasury, the patent shall issue for such less quantity.

"5. The certificates issued as herein provided, shall be transferable by endorsement and may be located in any part of this State, in accordance with the provisions of the act of Congress aforesaid.

"6. All certificates issued under the provisions of this act, shall be located and returned within two years from the time of issuing the same. This act to take effect and be in force from its passage.

Approved March 10, 1849. (See Sess. Acts, pp. 64, 65.)

II. Exhibit No. 1 of the petition, being a written notice to the Secretary of the Treasury of the United States of the selection by the Governor of Missouri, of the land in question, with his relinquishment of the surplus, dated December 15, 1849. (Record p. 13.)

III. Exhibit No. 3 of the petition, being a written communication of J. Butterfield, Commissioner of the General Land Office, inclosing to the Treasury Department, the selection aforesaid and relinquishment of the Governor of Missouri. This document further stated that from the plat on file and other records of his office, the said fractional section 9, township 44, range 7, east, was vacant land of the United States, subject to be selected under said act of Congress of September 4, 1841. (Record p. 14.)

IV. Exhibit No. 4 of the petition, being the approval of said selection by the Secretary of the Interior, dated January 17, 1850. (Record p. 14.)

V. Exhibit No. 5 of the petition, being a communication from the Commissioner of the General Land Office, Butterfield, notifying the Governor of Missouri, that said selection of land had been approved by the Secretary of the Interior for 320 acres, dated January 18, 1850. (Record, pp. 14 and 15.)

VI. Exhibit No. 6 of the petition, being a certificate of the Commissioner of the General Land Office, John Wilson, that said selection had been made and approved, dated June 26, 1855. (Record p. 15.)

VII. Circular from the Commissioner of the General Land Office of instructions and regulations for selecting lands under said act of Congress September 1, 1841, dated February 21, 1846. (Record, pp. 15, 16, 17, 18.)

VIII. Exhibit No. 8 of the petition, being a patent of the State of Missouri, conveying said land to William M. McPherson, February 7, 1850. (Record p. 19.)

IX. The plaintiff put in evidence a complete transcript of all proceedings and testimony which had been used by the said pre-emption claimants, to procure their title, and insisted that this transcript was conclusive that Thomas Chartrand, Sr. never had any right to a pre-emption. This transcript occupies from p. 20 to p. 107 of the record. The contents will be noticed hereafter.

X. The plaintiff put in evidence an act of the General Assembly of Missouri, incorporating the town of Carondelet, approved August 20, 1832.

XI. The plaintiff proved that Thomas Chartrand, Sr., voted at corporate elections of the town of Carondelet for the years 1836, 1837, 1838, 1840, 1841, 1842, 1843 and 1845, and was a member of the council of said town for the year 1838, and, therefore, could not have resided on the land in question, which was several hundred yards north of the northern line of said town, but did reside during said year in said town. (Record, p. 107.)

XII. Peter D. Barada, witness for the plaintiff, testified that Thomas Chartrand, Sr., resided in the town of Carondelet from 1833 to his death; that the witness served with him in the council in 1838; that said Chartrand lived out of the town but a short time; that the land in dispute was two and a half blocks north of the town at that time. (Record, p. 108.)

XIII. Edward Chase testified that the plaintiff had been in possession of the land in dispute fourteen years before the trial. (Record, p. 108.)

XIV. Hiram Paddleford also testified touching plaintiff's possession. (Record pp. 76, 77.)

THE DEFENDANTS' EVIDENCE.

The defendants read in evidence: .

I. Rector's survey of 1818 for the Trustees of the town of Carondelet.

II. Brown's survey thereof of 1834.

III. A deed from McPherson to Shepley & Humphrey, being a mortgage of the premises in dispute, dated March 7th, 1860. (Record, p. 110.)

This deed was relied on to show title out of the plaintiff; but the plaintiff proved that the mortgage was paid off prior to this suit. (See Record, p. 112.)

VI. A deed of McPherson to Thomas Chartrand, Jr., for four arpents of said fractional section 9, dated June 8, 1850. (Record, pp. 51, 52.)

V. A declaratory statement of Thomas Chartrand, Jr., dated March 15, 1846, for his pre-emption claim on the land in dispute. (Record, p. 44.)

VI. The defendants introduced Thomas W. Levant as a witness. His testimony is found (Record p. 113.)

VII. The defendants called Michael Chartrand, who testified. (Record, p. 113.)

VIII. The defendants offered the record of a suit between the city of Carondelet and the city of St. Louis, and a report of William Milburn from a book having no official or authentic character called "Controversy of Carondelet Commons" also sundry other documents, which were objected to by plaintiff as incompetent and irrelevant; the objection was sustained and the matter excluded. (The matter of said suit extends from page 115 to page 348 of the Record).

IX. The deed of McPherson to the city of Carondelet and Menkins, conveying four and a half acres of said fractional section 9. (Record page 348.)

X. The defendants called Mr. Levant as a witness (Record, p. 350).

XI. John Eppes Cowan's testimony for defendants is found (Record p. 350).

PLAINTIFF'S EVIDENCE IN REBUTTAL.

The plaintiff proved in rebuttal that Mr. Dallam held no office under the United States previous to the year 1849. Consequently he could have made no certificate nor done any act in reference to a pre-emption claim of the Chartrands

till after 1849. See testimony of Long & Hall, (Record, p. 351.) This was all the evidence in the cause. (Record, p. 351.)

The Circuit Court of St. Louis County made a decree in favor of McPherson. (See the decree, Record p. 12.)

The defendants Coleman, Niles, Hogan and the Chartrand's motion for new trial. (Record, p. 352.)

The defendant Cowan's motion for new trial. (Record, p. 353.)

Said motions overruled. (Record pp. 352, 353.) Appeals to Supreme Court of Missouri. (Record p. 355.)

The assignment of errors by appellants in Supreme Court of Missouri. (Record, p. 434.)

Judgment of the Circuit Court reversed, and petition dismissed in Supreme Court of Missouri. (Record, p. 436.)

The certificate of questions that arose and were decided on this record in the Supreme Court of Missouri is in the words and figures following, viz:

JOHN R. SHEPLEY,
JOHN F. GIBBONS and
CHARLES PARSONS,
Devisees and Trustees under the will of William M. McPherson,
Plaintiff's Respondents.

vs.

JOHN EPPES COWAN,
SAMUEL M. COLEMAN,
MICHAEL CHARTRAND, and others,
Appellants.

} *In the Supreme Court of Missouri, March Term 1873.*

"It is hereby certified that the above cause came on and

was regularly heard and decided in the Supreme Court of Missouri at the present March Term thereof, A. D. 1873, upon the appeal of said defendants from the judgment of the Circuit Court of St. Louis county, Missouri; that the following questions in the said cause did arise and had to be decided by this Court, that is to say, whether at the time of the selection of the land in dispute by the Governor of Missouri and the patent to McPherson said land was reserved from sale under a law of the United States; whether said land was such as could be selected by the State of Missouri in satisfaction of the grant by Congress; whether the proceedings on the part of the State of Missouri to select said land were valid under the laws of the United States; whether said McPherson or the State of Missouri acquired any right or title to said land by virtue of the laws of the United States; whether the certificate of John Wilson, Commissioner of the General Land Office of the United States, in respect to the selection of said land, dated June 25, 1855, was a valid act under said laws; whether said certificate was effective under said laws to confer any right upon said State or said McPherson; whether the said selection of said land by the said State as made was null and void; and that the said Supreme Court of Missouri did decide and adjudge that said land was reserved from entry and sale *from the passage of the act of Congress of June 13, 1812, down to the decision of the Supreme Court of the United States in the case of Carondelet v. St. Louis, December Term, 1861, 1 Black, p. 179;* that said land was not such as could be legally selected under the laws of the United States in satisfaction of the grant to Missouri by act of Congress, September 4, 1841; that the proceedings on the part of the State of Missouri to select said land were null and void; that neither said McPherson or said State took any title thereby; that said certificate of the Commissioner of the General Land Office was null and void; that the claim of McPherson's devisees standing on his documentary evidence derived from the

United States had no standing in court; that the title of the heirs of Chartrand under the laws of the United States was a better title than that of McPherson under the laws of the United States.

"And so holding and deciding, the Supreme Court of Missouri reversed the judgment of said Circuit Court, and dismissed the petition of said McPherson's devisees and trustees. All which is to be ordered of record as the reason for said decision of the Supreme Court of Missouri."

POINTS AND AUTHORITIES BY GLOVER & SHEPLEY FOR THE PLAINTIFFS IN ERROR.

First. The Supreme Court of Missouri erred in deciding that the land in question was reserved from sale or entry at the date of selection by the State of Missouri. Such a reservation could be made only in two ways:

1. By a law of the United States.
2. By order of the President according to law.

The decision of the Court below proceeded not upon the idea of a reservation by order of the President, but distinctly upon the force of the Act of Congress, June 13, 1812, (2 U. S. Stat. at Large, p. 748,) and the Act supplementary thereto of May 26, 1824, (4 U. S. Stat. at Large, p. 65,) as cre-

ating the reservation. It is only necessary to read these acts to perceive that they contain nothing on the subject of a reservation. We admit that a class of Spanish claims was reserved from entry and sale by the act of Congress entitled "an act providing for the final adjustment of claims to lands and for the sale of the public lands in the territories of Orleans and Louisiana, &c.," approved, March 3, 1811, (2 U. S. Stat. at Large, p. —.) 662

That act required claimants to file their title papers with specific description of the tracts claimed, and its 10th section was in these words: "That till *after the decision of Congress* thereon, no tract of land shall be offered for sale the claim to which has been in due time and *according to law* presented to the Recorder of Land Titles in the District of Louisiana and filed in his office *for the purpose* of being investigated by the Commissioners appointed for ascertaining the rights of persons claiming lands in the Territory of Louisiana."

Now, neither a claim to a village lot, common field lot or commons, could ever be reserved by this act of March 3, 1811, after June 13, 1812, because on that day Congress made its *final decision* upon all such claims.

The act of June 13, 1812, was a present grant of titles in fee simple to the claimants.

11 Mo. 184, Page *vs.* Scheibel.
16 How. 508, Guitard *vs.* Stoddard.

In respect to them no future investigation by Congress or its agents was contemplated, and therefore there was no reservation and no need for reservation of these claims. When, by the act of June 13, 1812, Congress confirmed the claim of Carondelet to commons, it had no longer any power over the subject matter.

It had nothing further to investigate, because it had made

its *final decision*, as contemplated by the act of March 3, 1811; so that if there had been a reservation of the claim of Carondelet to commons, it would have ceased on the passage of the confirming act, June 13, 1812.

But there is in this record no proof that Carondelet ever filed a claim to commons, such as to make it the subject of a reservation.

All that appears of any claim by Carondelet in this record, is an entry on page 142, in the words and figures following, viz:

"To the Recorder of Land Claims for the Territory of Missouri: Take notice that we, the inhabitants and settlers of the Village Vide Poche, in the District of St. Louis, claim title to 6,000 arpents of land situate adjoining said village, by virtue of a concession from Zenon Trudeau, Lieutenant Governor of Upper Louisiana, dated the 7th December, 1796. On the part of the inhabitants,

BT. LA JOYE, Fils,

Sa
LOUIS ✕ MENARD, Pere.
Marque"

But this appears only as part of the evidence in a former suit between *Carondelet* and *St. Louis*. If the record of that suit was competent for the purpose of showing there had been such a suit, and how it terminated, certainly that did not make the bill of exceptions, and all the matter contained in it, evidence against the plaintiff. It was never intended to be so. The record is somewhat confused, but enough appears to show that the bill of exceptions in the suit of *Carondelet vs. St. Louis*, and the matter contained in it was actually excluded. The defendants first offered in evidence, "the whole record of Carondelet Commons," specifying the matter specially desired by 10 specifications. (Record p. 114.) It was objected to by plaintiff

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being irrelevant, and objection was sustained, and defendants objected and excepted. The defendant offered report of William Milburn, and this was objected to; objection of plaintiff was sustained and defendants excepted. (Record p. 115.) The defendants offered the same record, limiting the offer to the petition, answer, trial entries and judgment, and this was not objected to and was admitted. (Record p. 112.) The defendants, however, seem to have had the entire record bills of exceptions and all copied into the transcript.

But we insist it was not in evidence; is not before this Court, and was not before the Supreme Court of Missouri. But without this foreign matter improperly inserted in the record, it does not appear that Carondelet ever filed any claim to commons at all. (11 Mo. 184 *Page vs. Scheibel*, 16 How. 509 *Guitard vs. Stoddard.*)

But if we concede that the claim mentioned on page 142 of the record was filed as it there appears, and is in evidence before this Court, it is not a claim to a specific tract of land, but a claim to a *quantity only* of 6,000 arpents, without metes or bounds, and therefore not the subject of a reservation. That which cannnot be described, cannot be reserved. It has never been held that the reservation intended by the 10th section of the act of March 3, 1811, could protect such a claim as that of the Carondelet Common. On the contrary, claims without specific metes and bounds have always been excluded from its operation.

This was conclusively settled in 8 How., 293, *Menard's Heirs vs. Massey.* In that case the claim of Cerre for 7,056 arpents conceded to him by Lieutenant-Governor Delassus, to be taken "at the great source of the River Maramec," was filed with the Recorder of Land Titles in 1806, and was finally confirmed by act of Congress July 4, 1836. The President of the United States supposing the claim of Cerre

was reserved by the act of March 3, 1811, issued his proclamation in terms reserving it from sale. It was also shown that Massey, who entered the land claimed under Cerre, had notice of Cerre's claim. But this Court held that Cerre's claim *was not reserved from sale.* That it was *too indefinite* as to location. The Court said the claim as filed could not be reserved under the act of March 3, 1811, unless it appeared "*what the boundaries of the reserved land were.*" And if this "did not appear no notice of the claim could be taken by the surveyor, nor by the registers and receivers when making sales." That he, Cerre, had claimed "*no tract of land.*" "The laws refer to specific tracts that are claimed; it is not material whether the boundaries are proper and according to the concession, or the claim be just or otherwise, *so that the tract claimed be certain.*" "An actual survey is not indispensable, but boundaries must appear in some form, *from the notice of claim and the accompanying evidences filed with the Recorder.*" If *from these* the tract could not be laid down on the township surveys, then the land could not be reserved from sale, although by the concession and by the notice a particular spot (as the Big Spring of the Maramec) was referred to in general terms as the place where the land should lie."

The principle of this decision is conclusive that the claim to commons by Carondelet was not reserved by any law of the United States. The claim filed showed no survey nor other document fixing any metes and bounds. In *Carondelet vs. St. Louis*, 1 Black, 179, this Court, upon a full consideration of this very claim of Carondelet, adjudged it to be "*in the condition of Cerre's claim* in 8 How., 293, *Menard's Heirs vs. Massey*, and said—"until a survey was made on the west and south the villagers (of Carondelet) had no title to the commons on which they could sue, *because their grant attached to no land.*"

This was tantamount to deciding that the claim of Caron-

delet was not reserved and could not be reserved from entry or sale for want of identity. If Cerre claimed no tract of land, Carondelet claimed no tract of land. The City of Carondelet sued McPherson for the express purpose of vacating the entry of the land now in dispute, and the final decision of the case is reported in 20 Mo., 192, *City of Carondelet vs. McPherson*. The Supreme Court of Missouri decided that the claim of Carondelet had no boundaries either by grant or survey, p. 197. (See 17 How., 403, *Cochran vs. West;* 18 How., 409, *Stanford vs. Taylor;* 8 Wall, 627, *Magwire vs. Tyler.*) Of course it could not be reserved from sale or entry.

That the 8th section of the "Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved Sept. 4, 1841, (5 U. S. S. at Large, p. 453), directs that no selection shall be made on any land reserved from sale, is immaterial to this case, unless it be first shown that such reservation existed at the time of McPherson's patent. The "Act to extend pre-emption rights to certain lands mentioned," approved March 3, 1853, (10 U. S. Stat. at Large, p. 244), has no bearing on the case, because there was no reservation of the lands in question, and no decision by the Supreme Court of the United States that any French or Spanish grant was invalid. It would seem, if the bill of exceptions in the case of *Carondelet vs. St. Louis* is evidence in the cause, that the Commissioner of the General Land Office supposed the land in question was reserved from entry and sale. But his opinion is not conclusive. In *Menard vs. Massey*, the President supposed the claim of Cerre was reserved, *and so stated in his proclamation*. But this Court said it was impossible to effect such a reservation, even by the President's proclamation, when the tract was without specific metes and bounds, and decided that sales made were valid, notwithstanding the proclamation of the President. The lands in question, therefore, were not reserved from entry.

Second. The State selection was made, and the patent issued in accordance with State laws. So the Supreme Court of Missouri decided, 20 Missouri, 204, *Carondelet vs. McPherson*, and that decision on the question is final in this Court.

Third. The selection of the land by the State of Missouri, and the patent to McPherson standing alone is a valid title and must prevail unless the defendants have shown a pre-emption right to the land older than the title of McPherson.

Fourth. Thomas Chartrand, Sr., never had any right of preemption to the land in question. His pre-emption is supposed to have existed "under the acts of 1838 and 1840." (Secretary Harlan's opinion, Record, p. 73.) The "act to grant pre-emption rights to settlers on the public lands," approved June 22, 1838, (5 U. S. Stat. at Large, p. 251), required the claimant, by virtue of it, to be:

1. An actual settler on the land;
2. The head of a family, or over 21 years of age;
3. To be in possession and *a housekeeper by personal residence* on the land at the passage of the act, and to have been so in possession and a housekeeper by personal residence on the land for four months next preceding the passage thereof.

It is a task of labor to go over all the evidence so-called presented by the Chartrand heirs to the Land Department, and show that the facts to establish a pre-emption right under the act of June 22, 1838, were not proved. It must, however, be done.

This evidence was of two classes:

1. Ex-parte affidavits;
2. Depositions taken upon notice.

By none of this matter was any pre-emption right shown.

We propose now to review their evidence of pre-emption right so called.

And first, we notice the depositions legally taken upon the question of the occupation of the land by Chartrand, Sr., June 22, 1838, and for four months preceding.

Antoine Motier, (Record p. 30,) testified he knew fract. section 9, town. 44, range 7 east, and occupied it for one year, 1834, under Thomas Chartrand, Sr., and when he left the land, Thomas Chartrand, Sr., moved on it with his family. He could not tell how long said Chartrand, Sr., lived there; perhaps one or two years and then he moved back to Carondelet.

The above is the whole substance of Motier's testimony about Thomas Chartrand, Sr's. occupation of the land. It shows that he lived on the land in 1835, and perhaps in 1836, and then went back to Carondelet where he had lived before.

Virginia Leffler, (Record p. 33,) testified she knew Thomas Chartrand, Sr., lived on the land 22 or 23 years ago. Her deposition was sworn September 12, 1862, so that she fixes his residence on the tract in 1839 or 1840, but in no other year.

John Pourcelli, (Record p. 35,) knew Thomas Chartrand, Sr., and knew his lands in the common fields of Carondelet; saw the house where he lived, on the east side of the present Stringtown road. This witness mentioned no date at all when the Senior Thomas Chartrand lived on the land.

Peter D. Barada, (Record p. 37,) testified he was told that Thomas Chartrand, Sr., lived in the house his brother

built and sold to said Thomas, east of the Stringtown road. The witness did not go about there much, and never saw him there, and could not say at what time said Chartrand lived there, if at all. Witness did not say who told him this, nor when it was told him. This hearsay matter was illegal, and could prove nothing.

Isham Pigeon, (Record p. 42,) testified that he knew old man Thomas Chartrand, and knew where he lived; was frequently at his house, the house he lived in stood between a plum tree and an apple tree, near to a sink hole, right in front of the house; both trees are standing yet; the house was on the east side of the present Stringtown road. Mr. Pigeon gave no dates.

The depositions taken on notice, and with opportunity to cross-examine, disclose nothing more than the above upon the question of Thomas Chartrand, Sr.'s occupation of the land; and we are confident that no impartial judge will find in them a particle of evidence that on the 22d day of June, 1838, and for four months previous to that day, Thomas Chartrand, Sr. was *in possession of this land as a housekeeper, by personal residence thereon.*

It is not even pretended by the Commissioner Edmonds, in his decision (Record p. 69) that on this testimony the pre-emption claim can be sustained; and he is compelled to resort to the ex-parte affidavits taken in the absence of McPherson, and without notice to him to help out that strange and unaccountable decision.

We proceed to review the ex-parte affidavits, so far as they relate to the occupation of the land by Thomas Chartrand, Sr., June 22, 1838, and for four months previous to that day.

Margaret Houston's affidavit. (Record p. 23.) Affiant stated she was well acquainted with Thomas Chartrand, Sr.; was

often at his house; not long before his death in 1845 she heard him express his intention to build a house on the land in question, where he had at that time an improvement; that he had timber lying in front of his house, which he purchased to build with. That said Chartrand, Sr. resided on the land in 1835, *and ever since that time he and his family have had a portion of it inclosed and in cultivation.* That Thomas Chartrand, Jr. built a house on the land in 1846, and held it in behalf of the heirs of his father, and in 1849, he built another house, and moved into it. That when he left, he put a tenant on the land. That Andrew Chartrand moved into this house and took possession for the heirs of his father. Sworn to May 5, 1851.

Another affidavit of *Margaret Huston.* (Record, p. 26.) Affiant states that in 1833 Thomas Chartrand, Sr., resided *in person* on fractl. section 9, township 44, range 7, east; that Felix and Paschal, sons of said Thomas, Sr., were born at his residence on said land, and at the date of her affidavit were 27 years old; that after the birth of said children, the father rented the land to Antoine Motier; that said Thomas Chartrand *continued in possession of said tract of land*, and a short time before his death was preparing to build a new residence on it; had on the tract window frames, door frames and lumber for the purpose; *that said Thomas resided in person on said land and had possession at the time of his death in 1845*; that after his death, his son Thomas, as administrator or executor of the estate of his father, resided upon said land, claiming it for himself and the other heirs; that Thomas, Jr., about 1849, moved from the tract and turned the possession over to his brother Andrew, which occurred June 1849, during the prevalence of the cholera, and the heirs of said Thomas Chartrand have occupied or possessed said land to the present day by themselves or tenants. Sworn to May 9, 1862.

It is remarkable that these ex-parte affidavits of Mrs. Huston should have contained so much more about acts and intentions of Michael Chartrand and Andrew Chartrand than they knew themselves; that Andrew was not examined as a witness at all, and Michael, though several times examined, did not corroborate her statements. It is also worthy of notice that Mrs. Huston was not examined at all when the depositions were taken upon notice, and when she could have been cross-examined.

Affidavit of *Mrs. Virginia Leffler.* (Record p. 26) This affiant states that Thomas Chartrand, Sr., resided in person on the land in question about 22 years ago, when her husband rented it from him, and resided on it one year. Sworn to May 9, 1862.

Mrs. Leffler would fix the personal residence of the elder Chartrand on the tract in 1840.

Affidavit of *Michael Chartrand.* (Record, p. 27.) Affiant omits all mention of the numerous facts referred to in the *ex-parte* affidavits of Mrs. Huston touching the possession and personal residence of his father, as a house-keeper on the land, though he certainly did know what the facts were. And had his father been a house-keeper residing in person on the land June 22d, 1838 and for four months previous, he could have stated it.

Michael Chartrand did state in his deposition (Record, p. 37), his "father died in 1845, and at the time of his death he lived in Carondelet, one-half or three-quarters of a mile from the land."

Affidavit of *Thomas W. Levant.* (Record, p. 27.) Affiant states that he became acquainted with Thomas Chartrand, Sr., about the year 1841. That in August 1841, affiant came to Carondelet and at that time Thomas Chartrand, Sr.,

claimed to be owner of, and was cultivating said land, had improvements on it. Sworn to May 10th, 1862.

We remark that this witness was examined on the trial by defendants, and cross-examined by plaintiff, and stated *that Thomas Chartrand, Sr., lived in the town (Carondelet) nearly all the time he knew him.* He lived in block 9, same neighborhood Barada lived.

It is perceived that by the regular depositions there was no proof that on the 22d of June 1838, and for four months previous thereto, Thomas Chartrand, Sr., was a resident house-keeper on said land; nor was there any proof that during such period he had even a tenant on the land, which however, could give him no rights. There was consequently no case for any pre-emption under the Act of Congress, June 22, 1838, shown by the legal testimony of claimants.

It is manifest that the Hon. Commissioner Edmonds, (see Decision Record p. 71,) did not consider the case made out by the legal evidence, and therefore he says p. 71, "this testimony (*Mrs. Huston's ex-parte affidavit*) was properly received."

Mr. Edmonds says further, p. 71: "Mrs. Leffler testifies that in 1839 or 1840, her husband moved into the house with Chartrand, and clearly identifies the site on Section 9. She also testifies that Chartrand was living in this house before and after her residence there. It appears then that he (Chartrand) might have established a pre-emption claim under the Act of 1838, *as an actual settler, the head of a family, and house-keeper, and in possession by personal residence on the 22d of June 1838 and for four months next preceding.*"

Mr. Edmonds is certainly not referring to the regular deposition of Mrs. Leffler in this part of his decision. The

deposition gives no support to such a statement. But he refers to Mrs. Leffler's ex-parte affidavit which says (Record p. 27): "He (Thomas Chartrand) resided in person in Section 9, Township, 44, Range 7 east about 22 years ago, (1840.) when my husband rented the land from (him) Thomas Chartrand, Sr., and we resided there one year, and then moved, turning the place over to Thomas Chartrand."

It is clear that the Commissioner was quoting from the illegal affidavit; and not less clear that even it does not prove that the elder Chartrand was a housekeeper by personal residence on the land June 22, 1838, and for four months next preceding.

On page 73, we find the following admission of Mr. Edmonds: "Through lapse of time, probably the evidence of the elder Chartrand's right under the act of 1834 is no longer quite satisfactory."

The same remark ought to have been made of his claim under June 22, 1838, of which we have shown there is no proof even on the evidence of the claimants, and no pretense of proof without the illegal ex-parte affidavits of Mrs. Huston, Mrs. Leffler and Thomas W. Levant. It is on this fraudulent evidence gotten up in the absence of McPherson, and without notice to him, that the pre-emption right was allowed by Commissioner Edmonds in the first place, and afterwards approved by Secretary Harlan.

But the case does not rest wholly on the testimony of the claimants. Conclusive evidence was before the Land Department, making it certain that Thomas Chartrand, Sr. was not a housekeeper on the land in question by personal residence June 22, 1838, and for four months preceding that date.

See affidavit of Peter D. Barada. (Record, p. 57.) Affiant states that at the regular annual election for the town of Carondelet, in April 1838, affiant, Thomas Chartrand, and

others were elected trustees of said town. That at the time of the election said Chartrand "lived near me in said town, and was the man who purchased an improvement of my brother in front of Carondelet common fields, where his heirs are now claiming a pre-emption." Sworn to October 2, 1865.

April 7, 1838, "Thomas Chartrand" was sworn in as a member of the board of trustees of Carondelet, (Record, p. 67,) and took his seat as such.

April 14, 1838, April 26, 1838, May 3, 1838, May 13, 1838, May 24, 1838, "Thomas Chartrand" was sitting in the board of trustees. (Record, pp. 57–58.)

July 13, 1838, "Mr. Thomas Chartrand tenders his resignation this day of his office of trustee, which was accepted." (Record, p. 58.)

Thomas Chartrand, as a resident of the town of Carondelet, voted at the town elections on the 4th of April, 1836, September 30, 1837, April 6, 1840, April 5, 1841, April 2, 1842, April 3, 1843, and April 7, 1845. (Record, pp. 58, 59, 60, 61 and 62.)

Peter D. Barada testified on the trial that Thomas Chartrand lived in Carondelet; was a member of the Council in 1838; and *only lived a short time out of the town; and was living in the town at his death.* (Record, p. 108.)

Michael Chartrand testified on the trial that his father never lived on the land from 1838 till his death, (Record, p. 113,) and it is certain he did live in Carondelet in 1837 and 1838.

Fifth.—Thomas Chartrand, sen., never had any right to pre-emption under the "Act supplemental to an act entitled an act to grant pre-emptions to settlers on the public lands, &c.," approved June 1, 1840, (5 U. S. Statutes at Large, p. 382.)

He made no improvement on the land; was not in the oc-

cupation of the land June 22, 1838, or for four months previous. There is no proof he had a tenant in possession June 22, 1838, and for four months preceding that date. But if he had, that would not secure him any right under the act of June 22, 1838.

Sixth.—If Thomas Chartrand, sen., ever had a right to a pre-emption on the land in question he lost it by not complying with the provisions of the law. The supposition of such pre-emption right in him implies that he was a house-keeper, personally residing on the land June 22, 1838, and for four months preceding that day, and was able and willing to make proof of his settlement on the land, and offered to do so in manner and time as required by law. There is in this record no evidence of such facts. If he could not have proved up his settlement and improvement in 1838 because the land had not been surveyed and plat returned to the Register's office, that difficulty no longer existed when the plat was filed in the Register's office in April 1841. "An act supplemental to an act granting the right of pre-emption to settlers on the public lands approved May 29, 1830," approved July 14, 1832, (4 U. S. Statutes at Large, p. 603,) provided that any settler on public land who had not been or should not be enabled to make proof and enter the same *in consequence of public surveys not made and returned*, should be permitted to do so in one year after such surveys.

And this one year was the utmost limit. The petition in this case states: that the land in question "was legally surveyed by the United States, and the official plat thereof on file in the office of the Register of Lands, in the proper district, on and since April, 1841. (Record, p. 3.)

The defendant Cowan, in his answer, expressly admits this allegation of the petition.

He says, "he also admits the survey and plat as stated." (Record, p. 7.) The other defendants admit the truth of

said allegation, by not denying it. It was consequently not legally possible for said Thomas Chartrand, Sr. to make proof of any pre-emption right in him existing prior to April 1841, after April 1842. No further time was allowed him by the law; and unless he made his proof and entry prior to April 1842, his claim was abandoned and lost forever.

We now proceed to consider what proof there was, if any, of an offer by him to prove his pre-emption right before April 1842.

As before we notice first the regular depositions:

See *Antoine Motier's* deposition. (Record, p. 31) Mr. Motier was asked the following question:

"Do you know of Mr. Thomas Chartrand, Sr. having taken steps to establish a pre-emption claim on this land?"

Answer. "Not of my own knowledge. *I know from statements made by others*, that he did. Mr. Thomas Chartrand, Sr. *may have told me himself;* I cannot say as to that; *I heard* it many times that he had taken such steps."

Michael Chartrand's deposition. (Record, p. 36.) "I saw my father have a certificate from the Register of the Land Office at St. Louis, stating that he had filed his declaration in said office, to claim fractional section 9, township 44, range 7, east. My father brought witnesses to St. Louis to prove up the pre-emption, and make the entry. He was refused by the land officers at St. Louis; I mean the application was refused; he was prevented from making the entry by the action of the officers of the Land Office.

Cross-examined. This witness said: "*I don't remember the date of the certificate, it was prior to 1840;* I saw more than one; the first was prior to 1840; I am positive I saw two my father had, and one that my brother had; I think the date of the second certificate of my fathers was 1841 or 1842; I think it was 1842; the date of my brother's certifi-

cate was later—I think 1846; my brother that had the certificate was Thomas Chartrand; my father brought witnesses here to prove the pre-emption once; that I am certain of; I was with him at the time; we all went to the Land Office together; my father had two witnesses there at the time; *I did not go up-stairs, and therefore don't know what they did; I remained in the carriage;* one of the witnesses was Joseph Leblond; I think a man by the name of Antoine Barada was there, but don't know the names of the other witnesses; there might have been three; when they came out of the office I took the certificate and read it; I don't know how many witnesses my brother had to prove his pre-emption; he never attempted to prove any pre-emption for himself; my brother showed me his certificate; he attempted to prove pre-emption for the heirs of my father, *at least he said so*, and I believe such was the case."

This witness further stated said Leblond and Barada are dead, and his impression is the certificate of his father was signed by Richard B. Dallam. He stated further: "I did not go with my brother to the Land Office when he made said application; I am thirty-six years of age." Deposition sworn to Sept. 19, 1862.

The above is all that the regular depositions contain of an attempt to prove up an improvement and settlement by Thomas Chartrand, Sr., prior to April 1842.

The testimony of M. Chartrand is no more valuable than that of Motier. Both are hearsay in great part; and so much of Michael Chartrand's as is not hearsay is pure imagination. Richard B. Dallam had no connection with the land office before 1849. (See testimony of Hall and Long, Record, p. 351.) The witness is, therefore, mistaken about his having signed any paper of 1840, 1841, 1842 or 1846. But the witness had no knowledge of signatures of land officers, and his statement about papers he saw and the contents of them when neither produced nor accounted for,

should have no more weight than his representations of what took place in the Land Office when he was not present, but down on the street in the carriage. It is impossible he could have seen any certificate of a declaration to claim a pre-emption prior to 1840 or 1841. The first pre-emption law which required or permitted the filing of a declaration of intention was the "Act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights" approved September 4, 1841.

So that the witness did not see any such paper prior to that date. If he ever saw such a paper after September 4, 1841, the fact is conclusive that the elder Thomas Chartrand had no claim under the Act of June 22, 1838. But when was it that Thomas Chartrand, Sr., took witnesses to St. Louis to prove his pre-emption? If it was after April, 1842, any right he had was barred by time, forfeited, gone. He may have offered to enter the land without proof; if so, the refusal of the officers was proper. What was the application? No one knows. We should presume the officers did their duty, and if they refused, refused rightfully. But it was not only the duty of the claimant to prove up his claim; but to pay for the land prior to April 1842. Had he any money? Did he tender any? We have already seen that Thomas Chartrand, Sr., was not a house-keeper personally residing on the land June 22, 1838 and four months preceding.

How then could he prove his pre-emption? It is one thing to bring witnesses to court to prove a case, and quite another thing to do it. The officers may have asked Mr. Chartrand whether he was not personally residing in the town of Carondelet; and on his verifying the fact, refused to hear anything more. Mr. Chartrand may have told the officers he had no money, and could not get it before April 1842, and the matter ended there.

It is positively certain from his own testimony Michael Chartrand never did know that any proof was offered of any one

fact to the Register and Receiver either before or after April 1842, nor whether any money was tendered to the Receiver at any time.

The absence of any trace of the existence of Thomas Chartrand, Sen. pre-emption on the books or files of the land office from 1838 to 1846 is an unanswerable argument against it. The law presumes these officers faithful, and that they did their duty.

If Thomas Chartrand went to the office and asked for information or advice, no entry would be made of the transaction. But if he went there and offered to prove up a pre-emption, it was their duty to receive the testimony, put down the statements of witnesses in writing, file them, number the claim, note it in red ink on the plat book and also on the tract book, decide the case in writing, and grant an appeal if applied for; when declarations were made they had to be filed. But nothing of the kind appears; not an entry is found; not a paper can be found. Before an entry could be rejected tender had to precede it. An offer to pay the money is necessary.

14 How., 387, Cunningham *vs.* Ashley.
3 Op. Att'y-Gen., 212.
4 Id., 638.

But the office books show no note of any such thing; no mention of a tender or offer to pay. How is it possible that two different certificates could have been issued to the elder Chartrand and nothing appear on the books or files about them? But where are those papers which Michael saw? If lost, why was not the loss proved? If not lost, why are they not produced? The land officers had no motive to suppress any facts. Not so with the claimants. They have every motive and every stimulus from their many active and earnest agents to make the worse appear the better cause. The sug-

gestion of Commissioner Edmonds that the papers were burnt in the great fire is without excuse. See Tuttle's ev., (Record, p. 34.)

How singular it is that no living witness is mentioned as present when Thomas Chartrand, sen., offered to prove or enter the land, or tendered the money. How careless were Mr. Chartrand's many advisers and agents that they preserved no memorandum of the offer to prove or of the tender of the purchase money. From 1838 to 1845, a period of seven years, in which we are told that Thomas Chartrand, sen., made continual efforts to establish his claim and enter the land, it would seem every trace of their movements had been intentionally destroyed.

The only depositary of these important facts appears to have been Michael Chartrand, an ignorant boy of 14 years, who swears substantially that he knows nothing about them, but has been willing to detail them at the suggestion of some one who preferred he should do the swearing.

It the claim of Thomas Chartrand, Sr., had been an honest claim, it would not have been so destitute of all facts usually attending an honest claim.

If it had been an honest claim, Thomas Chartrand, Jr., would scarcely have attempted to establish a pre-emption of his own in 1846. The effect of this was seen, and Michael was induced to swear that Thos. Chartrand, Jr., intended to prove the pre-emption for the heirs of his father. The paper he filed itself proves he intended no such thing.

We believe the heirs of Thomas Chartrand, Sr., never did set up this claim of their own motion. The record explains the movement; one-half the claim is demanded by Cowan, the other half by Coleman. The Chartrands have nothing but the privilege of pretending to belong to that worthy

class who find homes on the public domain through the bounty of Government.

How are we to account for the conduct of Thomas Chartrand, Sr., supposing his claim an honest one? How are we to account for the conduct of his many intelligent agents and advisers? If he was entitled to a pre-emption: if he believed he was so entitled, the law gave him a right to appeal, and why did he not appeal when he was so unjustly dealt with by the officers? He takes no appeal, abandons his claim, lives until 1845, dies not on the land but at his home in Carondelet, dies without asserting his claim. In the year after his death, Thomas Chartrand, Jr., knowing his father had no rights, attempts to prove a pre-emption of his own, and directly abandons that.

Let us now look over the ex-parte affidavits, and see what they prove upon the question of settlement and improvement, and payment or tender of purchase money.

Antoine Motier's affidavit. (Record, pp. 25 and 26.) Affiant says: "I *heard* that Thomas Chartrand had applied at the Land Office in St. Louis, for a pre-emption right to said tract of land on or about the year 1834."

Margaret Huston's affidavit. (Record, p. 26.) Affiant states: "*I heard Thomas Chartrand, Jr., state* that his father had applied to the Land Office at St. Louis for a pre-emption right to said tract of land. Sworn to May 9, 1862.

Michael Chartrand's affidavit. (Record, p. 27.) Affiant said he was 36 years of age; that his father, Thomas Chartrand, in his lifetime made *frequent* applications under the *various* pre-emption laws passed by Congress, to prove up a pre-emption upon fractional section 9, township 44,, range 7, east, and the same was refused by the land officers at St. Louis. He further stated he saw a certificate signed by the Register of the Land Office at St. Louis, stating Mr. Thomas

Chartrand had filed his pre-emption declaration in the Land Office at St. Louis; that his father took several witnesses to the Land Office at St. Louis, for the purpose of proving up his pre-emption, and make entry, and pay for same, and officers refused. Sworn to May 10, 1862.

This affidavit well illustrates the difference between an ex-parte affidavit and a deposition under cross-examination. In the ex-parte affidavit, there are "*frequent applications*" under the "*various pre-emption laws.*" In the deposition, the witness *knows nothing* of *any* application.

Thomas W. Levant's affidavit. (Record, p. 27.) Affiant stated he was 87 years old; came to reside in Carondelet, August, 1841; that in the fall of 1844, Thomas Chartrand, Sr. showed him a certificate of the Register of Land Office at St. Louis, of his intention to claim said tract under the pre-emption laws. Sworn to May 10, 1862.

Where was said certificate? Why was it not produced? Why was not the Register produced?

But if Thomas Chartrand, Sr., filed his declaration of intention under the act of September 4th, 1841, he abandoned his claim under that of June 22d, 1838, and was bound to prove up and pay before April 1842. The certificate was dead in 1844, if he had it. If such a certificate was issued by the Register under the act of September 4th, 1841, then that officer did not refuse to allow him to comply with the law. If such a statement was filed and certified it is proof positive that the claim was forfeited under the 15th section of said act of September 4th, 1841, (5 U. S. Statutes at Large, p. 457.)

When the Hon. Commissioner Edmonds in his decision (Record, p. 72,) says "It being established that more than one attempt was made to prove up and enter within the time allowed by law it was unquestionably the duty of the district

officers to receive the proof;" he is commenting on the ex-parte illegal affidavit of Michael Chartrand: not on any thing in the regular deposition, which in fact disproves that proposition.

Mr. Edmonds specially mentions the ex-parte illegal affidavit of Justice Levant as furnishing a basis for his decision. (Record, p. 72.)

Seventh. If Thomas Chartrand, Sr., ever had a pre-emption right under the act of June 22, 1838, it was abandoned and forfeited by his heirs, all of whom sold interests in the tract before it was proved up or the land paid for. The act of June 22, 1838, did not intend that a pre-emptor should pervert its bounty for the purpose of speculation. It intended the pre-emptor should enter the land for a home for himself and family. He could not abandon that intention without abandoning the law and the right. When the settler died, the right passed to his heirs, but it passed as a pre-emption right and subject to all the conditions of the act.

It was a fundamental condition of the act of June 22, 1838, that no one should take the benefit of it, whether the settler or his heirs, unless he took it exclusively for his own use, and whoever should receive a title from the Government under said law, was required to swear he had made no agreement by which any other person, then or in future, should have an interest in it, and if such was not the fact, the person forfeited all his interest in the land. (5 U. S. Stat. at Large, pp. 251, 252.) The act of Sept. 4, 1841, Sec. 13, (5 U. S. Stat. at Large, p. 456,) contains the same provision. This claim had fallen into the hands of speculators long before the patent issued or the proofs were taken. The Chartrands had abandoned and forfeited any right they had. That was not a very ingenious device of Commissioner Ed-

monds, by which he allowed one of the heirs of Thos. Chartrand, Sr., to swear that *his father* had not sold the land.

The father was not asking the benefit of the act; the heirs were asking the benefit of the act, and every one of them practiced a deliberate fraud in making the entry, and in receiving the patent.

Eighth. The allegations of the petition that the Land officers committed errors of law and fact; that Thos. Chartrand, Sr., never had any pre-emption rights; that the Land officers received as evidence, hearsay rumors and ex-parte affidavits; allowed Michael Chartrand, an interested witness, to testify in his own behalf; received oral evidence of pretended documents not accounted for, and granted said pre-emption right on the faith of such illegal evidence, and were imposed upon and misled by said Chartrand heirs and their agents into allowing them to enter, under the preemption laws, lands which they had sold and abandoned, are fully established by the evidence.

Ninth. That a court of equity has jurisdiction to correct such errors and grant relief to the injured party is undoubted.

"Where several parties set up conflicting claims to property with which a special tribunal may deal as between one party and the government, regardless of the rights of others, the latter may come into the ordinary courts to litigate the conflicting claims."

20 How. 6, Garland *vs.* Wynn.
1 Peters 212, Comeggs *vs.* Vasse.
22 How. 202, Lyttle *vs.* Arkansas.
1 Black 316, Harkness *vs.* Underhill.

Were this not so, the Land Department would exert an arbitrary power over the rights of citizens. In case of disputed entries of land, equity has jurisdiction to set aside and correct any errors or mistakes in matters of law or fact committed by the Land officers, and especially to relieve against acts of the Land Department induced by illegal or incompetent evidence and impositions and frauds, resulting from false or illegal affidavits.

20 How., 6, Garland *vs.* Wynn.
22 How., 202, Lytle *vs.* Arkansas.
2 Black 554, 558, Lindsay *vs.* Hawes.
1 Wallace 109, Minnesota *vs.* Bachelder.
7 Wallace 219, Silver *vs.* Ladd.
13 Wall, Johnson *vs.* Townsley.
18 How 43 Bernard, heirs v Ashley

The action of the Land Office may conclude the government before it has passed its title to another, but is not conclusive between parties holding seperate grants from the Government.

1 Mo., R. 398, Bird *vs.* Ward.
11 Mo., 586, Perry *vs.* O'Hanlon.
11 Mo., 333, Huntsacker *vs.* Clark.

Tenth.—That a court of equity has jurisdiction to remove the cloud upon the legal title of McPherson (he being in possession of the property,) created by the fraudulent entry and patent of Chartrand's heirs.

See 11 Ala., 307, Lyon *vs.* Hunt.
12 Ala., 740, Burt *vs.* Cossety.
2 Hayward, 226, Ward *vs.* Ward.
4 Mon., 380, Leigh *vs.* Everhart.
1 John Ch., 517, Hamilton *vs.* Cumming.

2 Paige, 482, Apthorpe *vs.* Comstock.
2 Russ. Ch., 432, Grover *vs.* Hugel.
17 Vesey, 111, Hayward *vs.* Dinsdale.
5 Beav., 241, Williams *vs.* Flight.
3 Brown Ch., 14, Ryan *vs.* McMath.
10 Yerger, 83, Jones *vs.* Perry.

To accept a deed conveying property belonging to another, and claim it, is a fraud.

12 Peters, 11, Swaze *vs.* Burke.

A patent wrongfully issued is a cloud.

4 Wall, 236, Hughes *vs.* The United States.

Where a conveyance of lands is procured by false practices, the owner may file a bill in equity to compel a surrender of it.

7 Wallace, 562, Cocks *vs.* Izard.
2 Comstock, 118, Cox *vs.* Cleft.

Eleventh.—The legal presumption is in favor of McPherson's title. It is sixteen years older than the Chartrand patent. The burthen of proof is on the claimants under the Chartrand patent to show that Thomas Chartrand, sen., had a pre-emption right by compliance on his part, and on the part of his heirs, with the pre-emption laws.

If it be that Thomas Chartrand, sen., applied to prove up a pre-emption, and applied to enter the land and was refused, such application and refusal of themselves amount to nothing.

Before they can amount to anything, it must first be shown what the applications were, and under what circumstances they were refused. The particular facts must appear in evidence before it can be known the refusal was not right.

GLOVER & SHEPLEY,

Solicitors for Plaintiffs in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Devisees and Trustees of
WM. McPHERSON,
vs.
COWAN, ET. AL.

No. 141.

Brief of P. PHILLIPS.

For Plaintiff in Error.

January 4, 1876.

R. O. Polkinhorn, Printer, Washington, D. C.

Supreme Court of the United States.

Devisees and Trustees of
WM. McPHERSON,
vs.
COWAN, ET. AL.
} No. 141.

Brief of P. PHILLIPS.

At the April Term, 1870, McPherson filed his petition in the Circuit Court of St. Louis County, against the defendants in Error.

The petition sets forth a grant to the State of Missouri of 500,000 acres of land, under the act 4 September, 1841. (5 Stat., 453.)

Also, the acts of the State for disposing of the lands, 13 March, 1845, 2 February, 1847, 13 February, 1849, and 10 March, 1849.

It then avers that the Governor of the State, on 15 December, 1849, notified the Secretary of the Interior that McPherson had selected in behalf of the State, fractional section 9, Township 4, Range 7, East $37\frac{40}{100}$ acres; that the State then relinquished to the U. S. the surplus, and accepted said fractional section, in lieu of 320 acres, as per Exhibits 1;————that this selection was approved by the U. S. authorities;———— that on 27 February, 1850, a patent was issued by the State to McPherson, under which he took possession and has held the same ever since.

It is further averred, that the defendant has set up a claim to an adverse valid title under the preëmption laws of the U. S., and that a patent therefore issued on 21 July, 1866.

This patent is alleged to be illegal and to have been obtained through fraud, and the petitioner prays for a decree vesting in him all title, real or pretended, which is held by defendants, and general relief.

Answers were filed, and on the hearing of the case there was a decree for McPherson. Thereupon an appeal was taken to the Supreme Court where this decree was reversed and the petition dismissed.

The questions raised and decided in the latter court are exhibited in the certificate of the Court, p. 437.

1. Whether at the time of the selection by the Governor of the State and the patent by the State, said land was reserved under a law of the United States.

2. Whether said land was such as could be selected by the State in satisfaction of the grant.

3. Whether the proceedings by the State in making the selection were valid under the laws of the United States.

4. Whether the State or McPherson acquired any title by virtue of the laws of the United States.

5. Whether the certificate of the Commissioner of the General Land Office, 22 June, 1855, in respect to the selection was a valid act.

6. Whether it was effective to confer any right on the State or on McPherson.

7. Whether the selection by the State, as made, was null and void.

Upon these questions the Court decided, that the land

in controversy was reserved "from entry and sale from the date of the act of 13 June, 1812, down to the decision of the Supreme Court, in Carondelet vs. St. Louis, December Term, 1861, 1 Black., 179, and could not be selected under the grant of 1841."

As a consequence of this, it was held that the proceedings by the State in the selection were null and void, and no title was acquired thereby."

Further, "that the certificate of the Commissioner of the General Land Office was also null and void, and that McPherson, standing on his documentary evidence derived from the United States, had no standing in court."

To this decision of the Supreme Court of the State the present writ of error is directed, and the plaintiff in error now

Assigns for Error

The judgment of said Supreme Court, holding that the land in controversy was reserved from entry and sale, and could not be selected by the State under the act of 1841, and that the selection, the approval of the Land Office, and the patent to McPherson, were all null and void.

McPherson's Title.

McPherson's title, under the State's selection, depends upon the 8th section of the act of 4th September, 1841, (5 Stat., 455,) as follows:

"There shall be granted to each State specified in the 1st section 500,000 acres of land for the purposes of internal improvement. * * * The selections in all of the said States to be made within their limits, respectively, in such manner as the legislatures thereof shall direct; and *located in parcels conformable to sectional divisions*

and subdivisions of not less than 320 *acres in any one location, on any public lands, except such as may be reserved from sale by any law of Congress or proclamation of the President of the United States*, which said locations may be made at any time after the lands shall have been surveyed according to existing laws."

The selection by the Governor of the State was communicated to the Secretary by letter, 15th December, 1849, as follows, in accordance with the act of the legislature 10th March, 1849:

"I have the honor to report to you that Wm. McPherson has selected, on behalf of the State, fractional sections 9, &c., &c., containing $37\frac{40}{100}$ acres.

"By virtue of the law aforesaid, * * * I do hereby relinquish to the United States the surplus, and accept said fractional section instead of 320 acres. The approval of said selection is requested."

On the 17th January, 1850, Secretary Ewing approved the selection, subject to any right which may have existed at the time it was made known to the Land Office by the agent of the State.

These proceedings were accompanied with a map showing the location of the land selected.

The approval by the Secretary was made on the letter of the Commissioner of the General Land Office in which it is stated that "it appears from the plat on file, and from the other records of the office, *as vacant public land*, subject to selection by the State of Missouri under the act of 1841." pp. 13, 14.

By letter of the Commissioner, 18th January, 1850, addressed to the Governor, he is informed that the se-

lection of the $37\frac{40}{100}$ acres by McPherson, as agent of the State, "has been approved by the Secretary of the Interior for 320 acres.

On the 20th June, 1855, the Commissioner incloses to McPherson a certificate that the fractional section had been approved to the State. p. 15.

The State patented the land to McPherson on 27th February, 1850. p. 19.

Assuming for the present that this land was not reserved from sale by any law of Congress or proclamation of the President, did McPherson acquire a valid title by the above-recited proceedings?

It is to be noted, in the first place, that the provision of the act of 1841 which required the selections to be made "in such manner as the *legislatures* thereof shall direct," was so modified by the act of 19th March, 1842, as to allow the *Governor* to make the selection. 5 Stat., 471.

In regard to the provision that the land selected was to be "located in parcels, conformably to sectional divisions and subdivisions of not less than 320 acres in any one location," it would seem to be a very narrow construction—one that would sacrifice substance for a shadow to hold—that all fractional sections were excluded from the operation of the act.

No reason can be assigned why the Government should have desired to reserve to itself these fractional sections, or to deprive the State from possessing them.

There are, in fact, but two limitations imposed by the law:

1st. The State was not to obtain more than 500,000 acres.

2d. The sectional divisions created by the system of surveys were to be adhered to in locating the selections—that is, the selector could not locate a portion of a half section, (which contains 320 acres,) nor was he allowed to take a quarter section. The reason of this is to be found in the consideration that 320 acres would be of more available value, relatively, than a less quantity.

McPherson takes 37 acres in this fractional section, and pays the State for 320 acres; so the State is not injured.

The State relinquishes to the Government the surplus of 320 acres; so that no injury is done to it. On the contrary, by the arrangement, the Government instead of parting with title to 500,000 acres, in fact relinquishes only 499,717, and thus gains 283 acres.

Treating the question then as wholly between the Government and McPherson, representing the State, the Government would have no ground to stand upon in any proceedings taken to set aside the selection.

The views here presented as to the construction of this provision are those adopted by the department entrusted with the execution of the land laws.

This is not only shown by the approval of the Commissioner and the Secretary, already cited, but is to be more particularly found in the circular of instructions issued to the registers on 6th August, 1847, directing them how the act of 1841 was to be carried into effect.

The 2d instruction, after referring to the provision for the location of 320 acres, declares: "Under this requirement, a selection may include a whole section or a fractional section, or an island containing 320 acres, more or less, provided the State, when the quantity is less than the prescribed number of acres, will agree to

accept the same for and in lieu of a tract containing the full quantity of 320 acres." p. 16.

The Government has never complained of the construction placed by the department on the act of 1841, and under which McPherson asserts his title, and it certainly does not lie in the mouth of the defendant to set up such an objection. Neither has he any interest in the question thus raised, for if he had a title protected by the act of 1841, or one prior in time, his defense is perfect without regard to the decision made by the Land Office approving the selection.

Was the land selected reserved from sale?

We have examined the brief of Mr. Hill, which was used in the court below in behalf of defendant, and now filed in this court, and find the assertion: that "the reservation of this land from sale or entry, was first removed by the act 3 March, 1853, and the decree of this court in 1862."

Again, it is said, "prior to the act of 1853 and the decision of the court, the land was reserved from sale, entry, or location to satisfy the claim of Carondelet to Commons." p. 3.

We nowhere find in the brief any act of Congress or Proclamation of the President, which shows that the land in controversy was reserved when the act of 1841 was passed.

In the absence of either a law or a proclamation the brief affords us a substitute in two letters of the Commissioner of the 6 August, 1847, and 24 August, 1848, rejecting certain entries on lands north of Brown's survey, and south of the commons of St. Louis, as these "are regarded by the office as reserved to satisfy the claim of

the village of Carondelet under the act of 13 June, 1812, and 26 May, 1824." p. 7.

The opinion of the Commissioner in 1848, cannot stand in the place of a law of Congress or proclamation of the President.

At the time these entries were proposed to be made, a litigation existed as to the extent of the commons. Carondelet was then claiming that they extended north of Brown's survey, and that she was not concluded by it. As there were judicial questions, it may have been very proper in the Department to treat this land as reserved, until the court had determined these questions.

The opinion of the Department that the land was reserved is binding as law, on no one. Nor was their rejection of the pre-emptors who had complied with legal requirements. Both the selector and the pre-emptor derive their rights from acts of Congress; what those rights are, this Court and not the Department is authorized to adjudge.

The Title of Carondelet.

Under the Spanish government Carondelet asserted a claim to 6,000 arpens as commons, but as there were no defined boundaries, there was no title as against this Government after the cession of the territory.

An appeal to the political department was made, and Carondelet presented the claim for confirmation to the Commissioners appointed for examining such claims as ought to be confirmed.

The Commissioners presented their report to Congress on the 1st December, 1812, with their opinion that this claim ought not to be confirmed. Land Laws, vol. 2, p. 672.

Congress, nevertheless, on the 13th June, 1812 (2 Stat., 748) passed an act by which it confirmed "the right, title and claim to village lots, out-lots, common field lots and *commons*, belonging to the several towns and villages" therein specified, Carondelet being of the number.

But this confirmation is coupled with a direction that the surveyor, as soon as may be, should mark out and survey "the out-boundary lines of the several towns or villages, so as to include the out-lots, common field lots, and *commons* thereto respectively belonging."

This survey was to be transmitted to the Surveyor General, who was to forward copies of the same to the Commissioner of the General Land Office and the Recorder of Titles.

The 2d section of the act, reserved all the lots included in the survey, not rightfully owned by individuals, for the support of schools.

The act of 27th Jauuary, 1831 (4 Stat., 425) again relinquishes the title of the United States—which had been already confirmed by the 1st and 2d sections of the act of 1812.

The only provision of law, which in any manner creates a reservation of land, is to be found in earlier acts. The act of 15th February, 1811 (2 Stat., 621) subsequently repealed, declares, "that till after the decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time and according to law presented to the Recorder for the purpose of being investigated by the Commissioners.

It is stated in the report of the Commissioners, that the Carondelet claim had been presented to the Recorder in 1808.

Whatever of reservation, therefore, had existed, it ter-

minated with the decision of Congress. That decision is to be found in the acts of 1825 and 1831, and the survey made under its direction.

This survey was made in 1834, and the prohibition as to sale of said lands, necessarily terminated when the title of Carondelet was perfected.

Was this survey conclusive of the title of Carondelet?

In the case of Kissel vs. St. Louis Public Schools (18 How., 21) which arose under the 2d section of the act of 1825, and under the relinquishment of the act of 1831, the contest was between a pre-emptor and the Board of School Commissioners.

On the trial the plaintiffs, school commissioners, gave in evidence a survey made in pursuance of the act of 1817, which survey had been approved on 6th December, 1840, by the surveyor general.

The plaintiff's title was upheld in the court below and in this court.

In the conclusion of the opinion delivered by Catron, J., it is said:

"It is proper to remark that we are here dealing with the survey, and ascertaining its effect as regards the lands granted and allotted for school purposes, and are not to be understood as expressing any opinion on the effect of this out-boundary survey on titles situate beyond it, and claimed to have been confirmed by the act of 1812," &c.

That is, the act of 1812, when coupled with the survey, conferred a good title to all within the boundary. But as to a title which rested upon the act alone, no opinion was expressed. This decision was delivered at December term, 1855.

In Carondelet v. St. Louis, decided at December Term, 1861, (1 Bl., 187,) the act of 1812 was again brought up for construction. It was contended by Mr. Hill that it "gives the land specifically and unconditionally to the inhabitants of Carondelet; that the title was perfect without a survey, and could not be divested by the survey of 1834." And this was also insisted on by Mr. Ewing, his colleague.

Catron, J., again delivered the opinion of the court. He describes the claim of Carondelet, with its undefined boundaries, as falling within the description of Cerre's case, investigated in the case of Menard's Heirs, v. Massey, and says: "Until a survey was made on the west and south, the villagers *had no title to the common* on which they could sue, because their grant attached to no land; nor could a court of equity establish a boundary." And West v. Cochran (17 How., 416) is cited.

He then points out a difference, under the act, as to town lots and out lots—for as to these they could be identified as matter of evidence.

He then refers to the cases of Chartrand v. Eckhart and Bell v. Penrose, in which it was held that the act of 1812 carried the fee, to show that in both cases the decision passed on the effect of a survey.

The opinion concludes with affirming the judgment of the Secretary of the Interior that Rector's survey and Brown's resurvey in 1834 concluded the Government and bound the corporation of Carondelet to the whole extent of the survey.

We are thus authorized to say that whatever of reservation may have existed prior to the survey of 1834 was then extinguished. Using the language of the court in the case cited, "the survey was the completion of the

title, although it succeeded the act of granting the land. It defined the grant." In other words, the act and the survey was the "decision of Congress" on the claim.

This is the view taken by the land department, and is made the basis of the judgment on which the defendant has obtained his patent. It is thus stated:

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"In March, 1834, the lines of Rector's survey were retraced, showing that this fractional section was *public land, rightfully subject to pre-emption.*"

It is still insisted that the land was reserved and so continued until the passage of the act, 3 March, 1853, (10 Stat. 244) and the decision of this court in Carondelet v. St. Louis, in 1861. p. 3.

The act referred to gives the right of preëmption to any settler "on lands heretofore reserved on account of claims under French, Spanish, or other grants which have been, or hereafter may be, declared by the Supreme Court to be *invalid*, after the lands shall be released from reservation, in the same manner, as if no reservation existed."

This has no bearing on the present controversy for the reasons:

First. That the court has not declared the claim of Carondelet to be *invalid*, on the contrary, it has adjudged it to be valid. The question decided by the court was one of boundary only.

Second. If, in 1841, the land was not reserved, then the title to the selection made under it was fully vested, and could not be divested by any subsequent act.

There being no reservation to prevent the operation of the act of 1841, a title under it could only be defeated

by showing that the Government had previously parted with it to another. The maxim "*nemo plus juris alium transferre potest, quam ipse habet,*" is as applicable to governments as to individuals.

Does the defendant show such a prior title?

The evidence on which the patent was issued to him as recited in the decision are, that Chartrand took up his residence on a portion of this section in 1835; that he died in 1845; that in 1846 and 1850 his heirs attempted to make proof and enter the land; that these offers were rejected by the district officers. p. 70.

Subsequently, to wit: 20 November, 1863, a favorable decision was made by the Register and Receiver; this was confirmed by the Commissioner, 22 March, 1865; by the Secretary, 4 June, 1866; the money was paid 16 June, 1866; the patent was issued 21 July, 1866. p. 21.

It thus appears that fourteen years after the selection had been made, under the act of 1841, for the first time it was decided that the defendant had the ri[illegible] land. As stated by the Commissioner, to enter was in 1846. In the affidavit counsel for defendant, appended to his a the department requesting that this cla ferred for examination to the Register a again stated that the offers to enter were made in 1846 and 1850.

In our view of the case we do not deem these dates material to the legal question now to be determined.

The nature of the preëmption title received very full consideration in the case of Frisbe v. Whitney, 9 Wall, 187, in which Miller J. having cited the preëmption act of 4 September, 1841, and to which all subsequent acts refer—says, " when *all these prerequisites are complied with, and the claimant has paid the price of the land,* &c., &c., &c.,

title, although it succeeded the act of granting the land. It defined the grant." In other words, the act and the survey was the "decision of Congress" on the claim.

This is the view taken by the land department, and is made the basis of the judgment on which the defendant has obtained his patent. It is thus stated:

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"In March, 1834, the lines of Rector's survey were retraced, showing that this fractional section was *public land, rightfully subject to pre-emption.*"

It is still insisted that the land was reserved and so continued until the passage of the act, 3 March, 1853, (10 Stat. 244) and the decision of this court in Carondelet v. St. Louis, in 1861. p. 3.

The act referred to gives the right of preëmption to any settler "on lands heretofore reserved on account of claims under French, Spanish, or other grants which have been, or hereafter may be, declared by the Supreme Court to be *invalid*, after the lands shall be released from reservation, in the same manner, as if no reservation existed."

This has no bearing on the present controversy for the reasons:

First. That the court has not declared the claim of Carondelet to be *invalid*, on the contrary, it has adjudged it to be valid. The question decided by the court was one of boundary only.

Second. If, in 1841, the land was not reserved, then the title to the selection made under it was fully vested, and could not be divested by any subsequent act.

There being no reservation to prevent the operation of the act of 1841, a title under it could only be defeated

by showing that the Government had previously parted with it to another. The maxim "*nemo plus juris alium transferre potest, quam ipse habet,*" is as applicable to governments as to individuals.

Does the defendant show such a prior title?

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It thus appears that fourteen years after the selection had been made, under the act of 1841, for the first time it was decided that the defendant had the right to enter this land. As stated by the Commissioner, the earliest offer to enter was in 1846. In the affidavit of Mr. Blair, of counsel for defendant, appended to his application before the department requesting that this claim should be referred for examination to the Register and Receiver, it is again stated that the offers to enter were made in 1846 and 1850.

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he is entitled to receive a patent, *which for the first time vests the legal title to the land.*"

The court then refers to a class of cases where the successful party had established a legal right of *preference of purchase* over the others, under the law as it stood when the Land Office decided the case. He then says: "it was the action of those officers, and their disregard of the law in refusing to the party the benefit of his *preference in purchase*, which the court corrected, by compelling the conveyance of the legal title acquired by the violation of the law."

"The argument (say the Court) is urged with much zeal; that because the complainant did all that was in his power towards perfecting his claim, he should not be held responsible for what could not be done. To this, we reply that the rights of a claimant are to be measured by the acts of Congress, and not by what he may, or may not be able to do; and if a sound construction of these acts shows that he acquired no vested interest in the land, then, as his rights are created by statutes, they must be governed by its provisions, whether they be hard or lenient."

The facts to which these rules of law were applied show that on the decision of the Court against the validity of Vallejo's title in the Soscol grant, Congress passed the act of 3d March, 1863, authorizing *bona fide* purchasers from Vallejo to enter the lands so purchased. (12 Stat. 808.) Frisbe, as such purchaser, became the possessor of the legal title. Whitney claimed by virtue of his pre-emption, that this title should be held to accrue to his benefit.

Whitney had applied to the Land Office to make the necessary declaration. This was refused, because the lands had not been surveyed. He applied again; he

was then refused, because Congress had passed the act of 1863.

The Court below decided in Whitney's favor, on the ground *that before the passage of the act he had acquired a vested right in the land, which could not be divested by any legislation of Congress.*

In reviewing this judgment, the Court admits that the land, when entered on by Whitney, was the subject of a pre-emption, but decides that the acts performed by him did not confer a vested right in the land.

The Court asks,—"What had he done? He had gone upon the land, built a house or barn, and perhaps inclosed some of the ground. He had applied to the Register of the Land Office and offered to make a declaration that he had done these things with the intention to make a permanent settlement and claiming the land under pre-emption, &c., &c."

"There is nothing (say the Court) in the essential nature of these acts to confer a vested right, or, indeed, any kind of claim to land, and it is necessary to refer to the preëmption laws to make out any shadow of such right."

We then submit, with confidence, that if McPherson's title, under the act of 1841, is not void, on the ground that the land was then reserved, it cannot be defeated by the claim of Chartrand to a pre-emption who had made no further advance in perfecting his title, than Whitney had made in the case cited.

Yosemite Valley case 15 Wall 78

It is insisted that the decision of the land on this pre-emption "is conclusive upon the parties, McPherson, and Chartrand, and can never be disputed by either of them." (p. 23.)

How far such a decision would conclude a controversy between *two settlers* contesting for the same land, is fully discussed in Johnson v. Towsley, 13 Wall, 80. It is there held, that however conclusive at law, it may in equity, be fully revised in all cases of fraud, imposition or mistake.

This, however, is not such a case. Here one of the parties claims directly under an act of Congress granting land to the State, and no power is conferred on the Land Office to make a conclusive judgment in such a case.

While, therefore, it might be admitted that, as between the government and the preëmptor, or between two pre-emptors, in the absence of fraud, imposition or mistake, the action of the Executive Department would be final, there is no warrant either in reason or in law to hold that McPherson's title is conclusively determined by such a decision.

It is again insisted that the act of 1841 "did not of itself convey the fee to any land whatever, and that when the State issued a patent to McPherson, the State had no title." p. 24.

The words of the 8th sec. of the act are, "there *shall be granted* to each State 500,000 acres. Provided, that to each of said States which has already received grants, there is *hereby granted*, no more than a quantity which shall, together with the amount received, make 500,000 acres.

The 9th section provides, that the lands *herein granted to the State above named* shall not be disposed of at less than $1.25 per acre."

The act does not provide for the issue of patents,

nor for the interference of the Land Office, in any manner.

The quantity was determined, and the *selection of the land* was left to the State legislature absolutely. This selection being only confined by the limitation, that it was made from the public land, not "reserved from sale by any law of Congress or proclamation of the President."

When, therefore, the State made the selection, it did all that was required to complete the title, and this title could only be defeated by showing that the location had been made on *reserved land.*

The selection, as we have seen, was reported to the Land Office, and approved by it; and on the 25 June, 1855, the following certificate was issued:

"I, John Wilson, Commissioner of the general Land Office, do hereby certify, that the state of Missouri selected under the 8th section of the act of Congress, approved 4th September, 1841, fractional section nine, in township forty-fourth, north of range seven, east of the fifth principle meridian, and that the said selection has been affirmed to the State according to law."

If, therefore, the title was not complete until the selection had been *approved by the land department*, we have the most authentic evidence of that approval.

The broad construction we have given to the act of 1841, and the selection made under it, as carrying the title, *proprio vigore*, is, we admit, in conflict with the opinion in Foley v. Harrison, 15 How. 447.

McLean J. in his opinion says—"the words of the act are, that "*there shall be granted*" to each State, not—"that *there is hereby granted.*"

We submit that in this construction the court ignored

wholly the other terms of the act already cited. Words of present grant are used in reference to States which had already received donations. As to these the statutory declaration is "*there is hereby granted.*" And again in the 9th section the lands are spoken of as "the lands herein *granted.*"

It would lead to a most anomalous result to hold, that as to the States which had already received donations, the act itself conferred title, while to those who had not, no title was conferred.

But in this case it is not material to insist upon this. Mr. Benjamin, for defendant in error in the case cited, while insisting that the act of itself did not carry the title, maintained that the true construction was, that "only on the approval of the locations by the Land Office the final severance from the public domain of the lands so located takes effect." And this was the view sustained by the court.

This decision was made at the December Term, 1853, and was followed by the act of Congress, of 3 August, 1854, (10 Stat. 346) which provides that—"in all cases where lands have been or shall be granted to a State, and where the law does not convey the fee simple title, or require a patent to be issued therefor, the *lists* of such lands which have been or may hereafter be certified by the Commissioner of the General Land Office shall be regarded as conveying the fee simple of all the lands embraced in said *lists*, that are of the character contemplated by such act of Congress, and intended to be granted thereby," &c., &c., &c.

If then the decision of Foley v. Harrison be maintained, to wit: that the act of 1841, and the location under it do not convey the title, we are still within the protection of that decision, for we have the approval of the location by the Land Department.

We are equally within the decision of Foley v. Harrison, and the protection of the act of 1854, which is retroactive as well as prospective, for the certificate of the Land Office is the *list* intended by the act. The certificate, that *one* selection by the State, was approved, is as clearly a list within the meaning of the act, as if it contained *one hundred* selections.

The case of Mills vs. Stoddard (8 How., 301) seems to be much relied on by defendant.

By the act of Congress of July, 1832 (4 Stat., 565) it was made the duty of the Recorder and Commissioners in Missouri, to examine the unconfirmed claims, and to arrange them in two classes. *First*, showing those which, in their opinion, would have been confirmed by the Government under which they originated. *Second*, those that are destitute of merit.

It is then provided that, after their report, the lands contained in the second class shall be subject to sale as other public lands. The lands in the first class to be reserved as heretofore, until the decision of Congress, and if that decision should be adverse, the lands so decided against shall be, in like manner, subject to sale.

In the case referred to, Stoddard claimed under a Spanish concession, with a survey by Soulard. When his claim was first presented it was rejected. He renewed it under the above act in 1833, when it was recommended for confirmation according to the survey on record. In 1836, Congress confirmed it, and the land was surveyed as confirmed.

Opposed to this was the title of Mills, who claimed under Peltier's entry of a New Madrid certificate, and a patent issued thereon, in 1832, subsequent to the act.

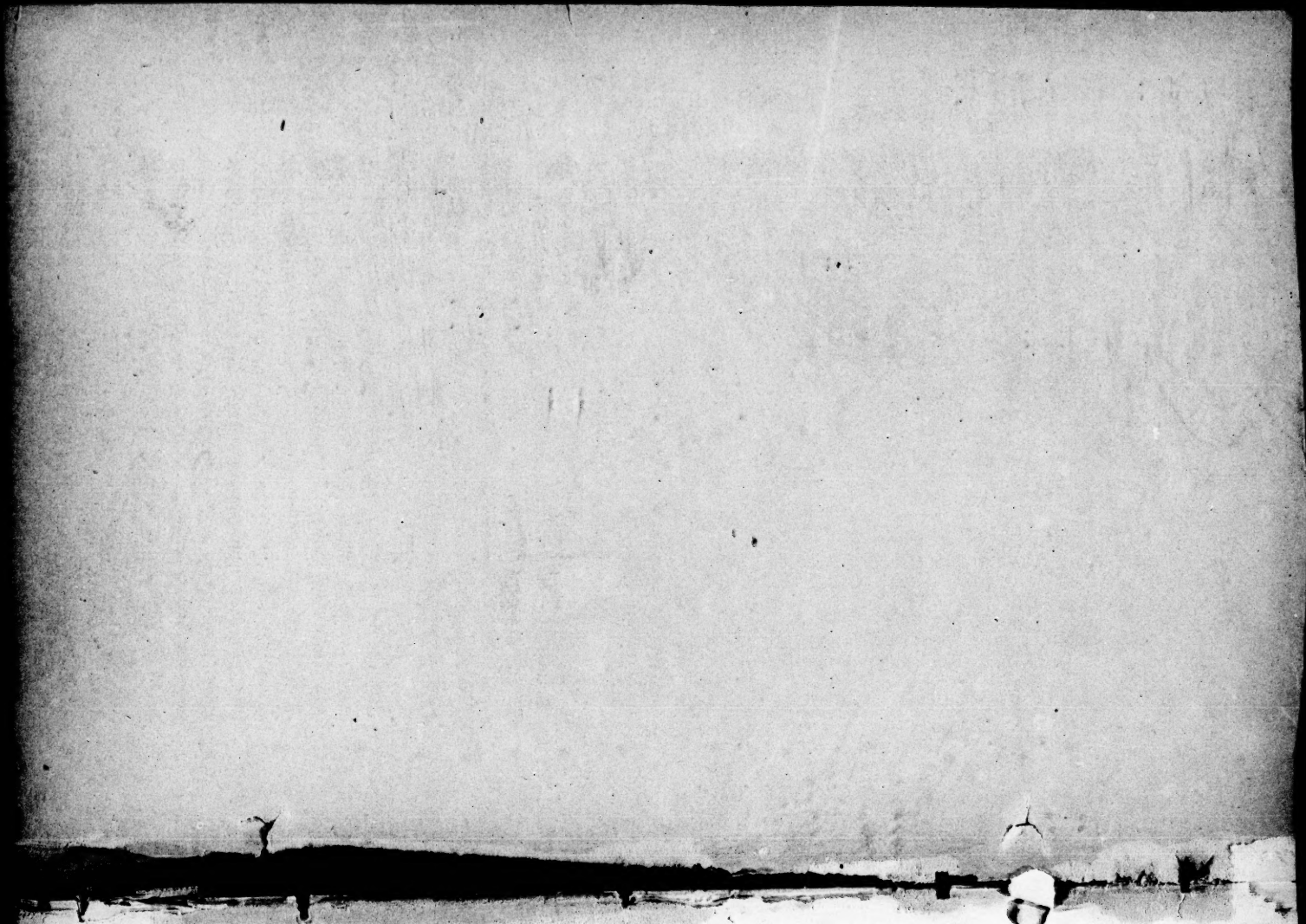
The question was whether the land was not reserved

from sale at the date of Peltier's location. The court below decided it was, and this judgment was affirmed here. In the decision, referring to the reservation made in the act of 1832, the Court repeat what they had said in a former case between the parties, "that the entry sought to appropriate land which had been expressly reserved," and to this they add: "Had the entry been made after the 26th May, 1829, when the *reservation ceased, and before it was reserved by the act of* 1832, the title of defendant could not have been disputed.

We conclude, then, by saying that, as the act of 1841 was passed long after the Carondelet claim had been decided on by Congress, there no longer existed any reservation for such claim, and that by it a full title to the selection under the State passed to him on the approval of the selection by the land department.

The judgment, therefore, should be reversed.

P. PHILLIPS,
for Plaintiff in Error.



Supreme Court of the United States
in error to

IN THE SUPREME COURT OF MISSOURI.

No. 374 Oct. T. 1874.

~~NO. 83, MARCH TERM, 1873.~~

WM. M. McPHERSON'S EXECUTORS AND TRUSTEES,
Plaintiffs, ~~*Respondents*~~, *in error*

versus

JOHN EPPES COWAN, EDWARD B. HOGAN, MICHAEL CHARTRAND, *et al.*, *Defendants*, ~~*Appellants*~~. *in error*

STATEMENT AND BRIEF BY BRITTON A. HILL, OF COUNSEL FOR Defts in Error ~~APPELLANTS~~, HOGAN, CHARTRAND, AND OTHERS.

William M. McPherson, on the 24th of January, 1870, filed his petition in equity in the Circuit Court of St. Louis County, to divest the title of defendants, who claim under a patent of the United States, on a pre-emption commenced by Thomas Chartrand in 1835, and continued by his sons in 1846 up to 1866, when the patent was issued to the heirs of Thomas Chartrand.

McPherson claimed title under a location illegally made by the officers of the United States in favor of the State of Missouri, and patent of the State under an Act of Congress of September 4th, 1841. (U. S. Statutes at large, vol. 5, p. 453, and Acts of this State, of March 27th, 1843, p. 77; February 2d, 1847, p. 88; March 10th, and 13th, pp. 61, 63, 65, of 1849.)

The controversy in this case arises between these parties, under the said State location, pre-emption-entry and patent. The plaintiff, McPherson, avers in his petition, that he is entitled to divest the interest of Thomas Chartrand's heirs, and by the aid of the State Court to have that interest vested in himself, on the ground that the pre-emption-patent was obtained by fraud, false swearing,

ex parte affidavits, and through gross errors and mistakes of fact, by the land officers of the United States. Plaintiff, also, seeks to quiet his title for the same reason. The scope of plaintiff's petition is, to ask the State court in equity, which of the two legal titles is the better one.

The chain of plaintiff's title is as follows: December 15th, 1849, the Governor of Missouri authorized a selection by McPherson for himself as State Agent, of fractional section 9, T. 44, R. 7, a tract of 37 40-100 acres, and relinquished 282 60-100 acres—the surplus of 320 acres over the 37 40-100 acres.

The selection of this land was approved by the Secretary of the Interior of the United States, on January 17th, 1850, on *ex parte* application of McPherson, and the land was patented by the State of Missouri to McPherson February 27th, 1850, in fraud of the donation act of 1841, and in violation of the instructions of the Commissioner of General Land Office. (Rec. 34–5.)

This selection, approval, and patent for McPherson is void, because the donation act of 1841 (Lester's Land Laws, Vol. 1, p. 61, § 8; 5 U. S. Stat. p. 454, § 8), limits the selection to "any public land except such as is or may be reserved from sale by any law of Congress, or proclamation of the President of the United States:" "And located in parcels conformably to sectional divisions and sub-divisions of not less than 320 acres."

The defendants claimed under a pre-emption commenced in 1835, while the land was reserved from sale or entry. This pre-emption was perfected after March, 1862, when the Supreme Court of the United States, in the case of Carondelet v. St. Louis, decided that the commons in controversy between the two cities could not extend, or be claimed by Carondelet north of the north line of Brown's U. S. survey of the commons of Carondelet made in 1834, because the trustees had accepted that survey, brought and defended suits, and sold and leased lots in the commons in accordance with that survey.

After the decision, refusing the reservation for commons of Carondelet, the heirs of Thomas Chartrand, being then in posession under their father, the original pre-emptor, who had died in 1845, proceeded, under the Acts of Congress of March 3d, 1853 and September 4th, 1841, and the said decision of the Supreme Court of

the U. S., made in March 1862; to complete their pre-emption and procure a patent, which was issued by the United States to the heirs of Thomas Chartrand on the 21st of July, 1866, upon proofs and testimony taken before the proper officers in a contest between McPherson and said heirs of Thomas Chartrand continued from 17th April of 1862, (Rec. p. 44,) to the summer of 1866, (Rec. p. 135.) This controversy was not *ex parte*, both contestants appearing before the land officers of the Government, either in person or by attorney, and filing arguments, plats and testimony as to their respective claims under the State location and the Chartrand pre-emption.

The reservation of the land embracing the land in suit and other lands north of it, from sale or entry, and from any State location, was first removed by the Act of Congress of March 3d, 1853, and said decision of Supreme Court of the United States in March 1862.

The Act of Congress, (Vol. 10, U. S. Statutes at large, p. 244,) is as follows: "*And provided further*, that any *settler* who has *settled*, or may hereafter *settle*, on lands heretofore reserved on account of claims under French, Spanish or other grants, which have been, or shall be hereafter declared by the *Supreme Court of the United States* to be invalid, shall be entitled to all the rights of pre-emption granted by this Act and the Act 4th September, 1841, entitled 'an Act to appropriate the proceeds of the public lands, and to grant pre-emption rights,' after the lands shall be released from reservation in the same manner as if no reservation had existed." Approved March 3d, 1853.

Prior to this Act of 1853, and said decision of the Supreme Court of the United States in 1862, the land in suit was reserved from sale, entry or location to satisfy the claim of Carondelet to commons on the north of Brown's survey of 1834. Kissell v. the Schools, 18 How. p. 25, and Carondelet v. St. Louis, Supreme Court record given in evidence in this case, as printed. (1 Black 179.)

This land was within the out-boundary line of the village of Carondelet, as directed to be surveyed by Sec. 1 of Act 13th June, 1812, U. S. Statutes, vol. 2, p. 748 to 750, "so as to include the out lots, village lots, common-field lots and commons thereto respectively belonging." (1 Black, 595.)

This land is bounded north by Brown's survey of 1833 for the commons of St. Louis; east by the Mississippi river; south by Brown's survey of 1834 for Carondelet commons, and west by the common fields of Carondelet. The inhabitants and trustees of Carondelet have claimed this land as commons of that village since June 7th, 1808, (See. Rec. S. C. U. S. in Carondelet v. St. Louis, given in evidence in this case, pp. 15 to 24, 29 to 31, 183 to 185, 188 to 191); and they persistently claimed it from 15th September, 1834, until March, 1862, when the Supreme Court of the U. S. held they were estopped from claiming it by the acceptance of Brown's survey of 1834, locating their commons on the north—nearly one mile south of their commons—as they existed in Spanish times.

The selection and location for the State by McPherson is void for three reasons:

1st, because the land was reserved from sale until the decision of 1862 by Supreme Court of the United States, and could not be located for the State under the said Act of 1841, at any time from the date of said Act up to March, 1862; it being for the whole of said period claimed as a part of Carondelet commons under the Acts of 1812, 1816, 1824 and 1826.

2d, the donation Act of 1841, under which McPherson made said State location in 1850, expressly prohibits any State location to be made on land claimed by a pre-empting claimant, or reserved from sale by any law of Congress, or by proclamation of the President.

3rd. Because the tract is less than 320 acres and no official plat of frac. sec. 9 existed in the office of the Register and Receiver of the United States except one sent them in 1842 by the surveyor-general on the face of which is written over frac. sec. 9 these words: "This tract embraced in survey No. 3102 is claimed by the Inhabitants of the Town of Carondelet," (Rec. p. 149) and McPherson made the location before the Secretary of the Interior and the Commissioner in 1850, in violation of law, knowing that the Register and Receiver had held the land to be reserved. (Rec. 151.)

A reference to the official acts of the land officers of the U. S. and the proceedings in the said suit of Carondelet v. St. Louis, (1 Black, 179,) with the record in this case will show, that McPherson's State location is a nullity *ab initio*.

The surveys and proceedings by the two towns are, as follows:

1st. Soulard's Spanish survey of the division line between the Commons of St. Louis and Carondelet at the Sugar Loaf Mound, running west to the Carondelet Common fields in 1793–4 (S. C. U. S. Rec. p. 15.)

2d. Private survey of the St. Louis Commons nearly on the same place as the old division line by James Mackey, in 1806, p. 75.

3d. The incorporation of St. Louis in 1809 by the Court of Common Pleas, calling for the south boundary of St. Louis to be at the Sugar Loaf Mound. (Rec. S. C. U. S. p. 111)

4th. Official survey of the corporation of St. Louis by Brown in 1820, locating the southern boundary thereof at the Sugar Loaf Mound, (p. 111, *Id.*)

5th. United States survey and plat by Brown, of 1821, townships 43, 44, 45, covering the townships of St. Louis and of Carondelet, has a common dividing line running from the Sugar Loaf Mound, west, to the common field fence of Carondelet. These surveys of 1821 are not to be found in the Surveyor General's office at St. Louis. (*Id.* pp. 233–4, 262–3.)

6th. Survey by Brown in 1833 for St. Louis Commons, extending three-fourths of a mile south of the Sugar Loaf Mound, (*Id.* p. 76.)

7th. Survey by Brown in 1834 for Carondelet Commons, locating the north line thereof nearly a mile below the Sugar Loaf Mound and leaving a space of 37.40 acres between the two commons now known as frac. sec. 9 which is the land in suit. (*Id.* p. 40.)

8th. Survey by Brown of the Common fields of Carondelet, in 1834, on which the line from the Sugar Loaf Mound to the Common fields lot west, is laid down by him, as the line claimed by the inhabitants in 1821, and still claimed by them. (*Id.* p. 224.)

9th. The U. S. survey of the Commons of Carondelet, by Brown in 1834, was contested before the Surveyor General at St. Louis, the Secretary of the Treasury, of the Interior, and the General Land office by the trustees of Carondelet, from September 15th, 1834, until the 23rd of February, 1855. (*Id.* pp. 230–3, 259.)

10th. Seven days before the final decision in the Land office and the department of the Interior, Carondelet brought suit against St. Louis for her commons north of Brown's survey of 1834 up to the Sugar Loaf Mound, claiming the same by proved possession before

1803, under the confirming act 13th of June, 1812, and the decisions of Chouteau v. Eckart, 2 How. 345; Mackey v. Dillon, 4 How. 421–450; Carondelet v. McPherson, 20 Mo. 192; and Milburn v. Hortes, 1 Black U. S. 595. The city of St. Louis claimed that Brown's survey of the commons of Carondelet of 1834, estopped that town from recovering the land north of the north line of Brown's survey; and the Supreme court of U. S., in 1862, held this to be a good defense as stated, even if the land were a part of the commons of Carondelet in Spanish times and confirmed to the village by the act of 1812. This fractional section 9 was a part of the Commons until that decision was made, divesting the title of Carondelet by removing her claim and title by the law of estoppel and so investing the U. S. with that title, subject to be disposed of under the laws of the U. S., which required the title to be vested in the heirs of Thomas Chartrand, if they and their father, were actual settlers on this land during the existence of the Spanish claim after the title granted in 1812, before the 1st of January, 1850, and until the spring of 1862.

This decision of the Supreme Court of the United States removed the reservation in March, 1862, and fractional section 9, for the first time, became public land liable to pre-emption only by actual *settlers* under said act of 1853.

The State location of 1850, made when this land was reserved from sale, is therefore a nullity; because, the land in fractional section 9 was not public land in 1850, was not subject to sale or entry, was expressly reserved from sale by the acts of Congress of 13th of June, 1812, 26th of May, 1824, and 29th of April, 1826, and was declared to be reserved from sale, by the Commissioner of the General Land Office, in decisions of the 6th of August, 1847, and 22d and 24th of August, 1848. (Rec. 147, 151, 116.)

To prove this beyond dispute, I refer to the record of the Supreme Court of the United States offered in evidence in this case and excluded by the court, the defendants excepting. (Rec. 169.)

On the 22d of July, 1847, Peter Delor, a trespasser on the Chartrands, applied for a pre-emption on this frac. sec. 9, T. 44, R. 7 east, containing 37.40 acres, under the said donation act of 4th Sept., 1841, (149) and the register and receiver refused it.

On the 6th of August 1847, Richard M. Young, commissioner of

the General Land office, decided, that the Register at St. Louis, had "properly "refused to allow this pre-emption claim of Delor, because "*of the reservation of the land for said Carondelet common*, "your predecessor having for like reasons, refused to dispose of it "in any way. Your action in this respect is approved, and for the "reasons given by you, a refusal to entertain the claim at all, even "impliedly, to the extend reported, would have been equally tenable "and more proper."

"The claim (independent of the vital objection that it could not "be made to reserved land) appears from the fact in regard to the "nature of the settlement reported by you, as exhibited by the tes- "timony filed, to be devoid of any merits." (S. C. U. S. Rec. 217, 218, and this Rec. 159.)

On the 24th August 1848, the Commissioner decided that all entries for lands, within the survey of the Carondelet commons of 1834, will be cancelled, and that "the same principle will apply, "to the land supposed to be vacant, between the commons of "Carondelet and those of St. Louis." (*Id.* S. C. U. S. 319.)

Fifteen entries were reported by the United States Register at St. Louis, on the 21st of June, 1848, and on the 24th of August, 1848, the Commissioner decided as follows:

"GENERAL LAND OFFICE, Aug. 24, 1848.

"GENTLEMEN:

"It has been represented to this office that a number of entries "have been permitted by you within the limits of the commons of "Carondelet, as represented by the survey thereof, made by Jos. "C. Brown, deputy surveyor, in March, 1834. The whole of the "land within those limits, and *also that north of Brown's sur- "vey and south of the commons of St. Louis, are regarded "by this office as reserved to satisfy* the claim of the village of "Carondelet, under the acts of 13th of June, 1812, and 26th of "May, 1824, and in future you will also please consider them "as reserved from sale or entry of any kind, unless otherwise in- "structed by this office. * * *

"RICHARD M. YOUNG, *Commissioner*.

(U. S. S. Court Rec. pp. 220 to 222.)

The controversy, before the Commissioner and the Secretary of the Interior, in regard to the extent of these commons, continued until May, 1855, before the Land Department of the United States, and during all that time the land sued for remained reserved from sale, entry, or pre-emption, and was not public land subject to location by the State, under said donation act of 1841, when McPherson illegally made the location in 1850. (Rec. S. C. U. S. 222–259.)

In 1852 and 1855 McPherson, in order to defeat the claim of Carondelet to her commons, appeared before the Commissioner of the General Land Office and the Secretary of the Interior, and made arguments to fortify his illegal location on this land. (Rec. *Id.* 224–232.)

On the 16th of February, 1855, Carondelet sued St. Louis for the land north of Brown's survey of 1834, running up to the Sugar Loaf Mound, and claimed that it was granted to Carondelet directly, *in presenti*, by the act of the 13th of June, 1812. (Rec. S. C. U. S. p. 1.)

The instructions given by the court for Carondelet show that this claim for commons north of Brown's survey to the Sugar Loaf Mound was approved by the court (Rec. pp. 263–4 *Id*). The instructions given for St. Louis left the question to the jury, whether Carondelet was not estopped from claiming the true lines of her commons on the north, so granted in 1812, by accepting the survey of 1834 by Brown. The Supreme Court of Missouri so held, and the judgment was affirmed by the Supreme Court of the United States. (1 Black, 179.)

By force of the Act of the Congress of 1853, (Vol. 10, p. 244, U. S. S.) this decision removed the reservation from frac. sec. 9, in the spring of 1862 (Rec. 179), and Chartrand's heirs immediately prosecuted their claim as settlers on said Sec. 9, by applying to the Commissioner of the General Land Office, early in April, 1862, and on the 17th of that month the Register and Receiver were ordered by the Commissioner to proceed and take proofs of the Chartrand pre-emption. The register and receiver gave notice, on the 29th April, 1862, to McPherson and the Chartrands, to take testimony on the 9th of May, 1862, before Justice Levant, at the city of Carondelet (Rec. 44, 61, 62, 128). The depositions proving Char-

trand's settlement, improvements and possession were taken according to the notice, but McPherson did not appear, complaining that time enough had not been given. (Rec. pp. 61, 2.)

On McPherson's affidavit the Commissioner of the general land office, on the 26th of May, and 30th of June, 1862, ordered the proofs to be taken again before B. F. Hickman, commissioner and clerk of the Circuit Court of the United States, August, 25th, 1862. McPherson was not yet ready, and made an agreement with the Chartrand heirs to take depositions on the 8th of September, 1862, before said Hickman. (Rec. p. 62.) These depositions were opened on the same day after they were closed and further depositions were taken, McPherson being present and cross-examining witnesses. (Rec. p. 62–87.) On the 3d of December, 1862, the register and receiver ordered further proofs to be taken; notice was given to McPherson to appear before Hickman on the 6th of January, 1863. McPherson appeared; the witnesses testified, as will appear in Rec. pp. 88–92. The register and receiver reported the facts in favor of the pre-emption, settlement and possession of Thomas Chartrand and his heirs to the Commissioner of the general land office. (Rec. p. 128.) All the evidence introduced by the Chartrands and by McPherson was reported to the Commissioner of the general land office by the register and receiver.

Arguments were filed by both parties up to the 22d of March, 1865, when the Commissioner decided in favor of the pre-emption. (Rec. p. 137.) McPherson then took an appeal to the Secretary of the Interior, and filed further evidence and affidavits wholly *ex parte*, on the 23d and 24th of February. 1866 (Rec. pp. 116, 125, 127 and 165); he also filed arguments and contested the case bitterly. But on the 4th of June, 1866, the Secretary of the Interior affirmed the decision of the Commissioner in favor of the Chartrand pre-emption. (Rec. p. 146.) Under instructions from the Commissioner the pre-emption and entry were perfected on June 16th, 1866, and the register's certificate was issued to the heirs of Thomas Chartrand, and a patent was issued and delivered to them on the 21st of July, 1866. (Rec. pp. 134–5, 147.)

An actual settler is the only one entitled to pre-emption on land covered by French or Spanish claims by force of the said act of 1853. Such actual settlers must be those who occupied the land

during the existence of the reservations, and they alone are authorized to prove up their pre-emption after such French and Spanish claims are removed by the Supreme Court of the United States.

In all the proceedings by the heirs of Thomas Chartrand before the Commissioner and the Secretary of the Interior—McPherson, claiming under the State location of 1850, and the State patent—appeared and opposed the right of the heirs of Chartrand to the pre-emption. He cross-examined witnesses, appeared in person before the officers of the land department of the government to resist the claim of Carondelet to her commons, and to resist the claim of Thomas Chartrand's heirs to this pre-emption. He filed arguments as his own attorney, being a lawyer by profession, made his own affidavit, and contested the case inch by inch up to the day the patent was issued to Chartrand in 1866 (S. C. Rec. of U. S., March 4th, 1852, p. 224); and McPherson appeared as attorney for St. Louis, contesting the claim of Carondelet to her common north of Brown's survey of 1834, five years after he had procured a State location for the land sued for, with the hope of aiding his void location.

To the certificate on the papers for the State location of 1850, for McPherson, dated June 26, 1855, there is appended, by John Wilson, Commissioner, the following:

"P. S. Copies of the Secretary's decision on the Carondelet case are being prepared, and will be transmitted to you as soon as practicable. J. W., Com'r."

Rec. of this case p. 32.

McPherson testified in this case that he employed counsel, went to Washington in person to object to the claim of Carondelet for commons north of Brown's survey of 1834. (Rec. p. 162.) He employed Henry Beard, Esq., and Gen. Thomas Ewing, Jr., in Washington to defeat the Chartrand pre-emption (*Id.* pp. 162–3), and united all his influence with theirs to break down and destroy the just and meritorious claim of the Chartrand heirs to this pre-emption, if Carondelet had no commons there.

McPherson's State location was void for the further reason that it was made in violation of instructions of the Commissioner of the General Land Office of August 6th, 1847, directed to all the registers of the United States, in Ohio, Indiana, Illinois, Ala-

bama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan, wherein the Donation Act of September 4, 1841, applied.

By these instructions, the selections must be made in the office of the United States Register in the district where the land lies. (Rec. p. 34.)

The selecting agent of the State is required to file in the register's office, "an authenticated copy of his letter of appointment," or other evidence of his authority." (Rec. p. 35, § 5.)

The register is required by the same section 5 of instructions, before he authorizes a selection, "to examine thoroughly that no "valid claim by pre-emption or otherwise exists;" "to examine "the plats, records and papers in (his) office, *before* the lists of "land so located are filed, and see that such selections are in all "respects free from such objections."

Section 4 of said instructions (Rec. p. 35) declares: "But no "State selection is admissible upon any land to which a *pre-emption* "*or other valid* claim shall be legally established, nor upon any "land which is or may be reserved from sale by any law of Con- "gress, or proclamation of the President of the United States, "nor any tract which is *reserved* or withdrawn from market, for "any purpose whatever."

Section 3 of said instructions declares (Rec. p. 34): "The "selections must be based upon the official township plats of the "public surveys, which are *required* to be *approved* by the Sur- "veyor-General, and on file in the local land office at the time of "filing the selection."

These were the instructions in force when McPherson illegally made this selection in Washington, without making application to the United States Register at St. Louis, as required by the said instructions. He went to the Secretary of the Interior and not to the register and receiver, the proper land officers (Rec. p. 53), who would have known of any and all pre-emptions or reservations, and the plats of public lands subject to sale or entry at the United States local land offices.

Mr. McPherson seemed to suppose he had no legal steps to take other than those required by the State act of 1849, (p. 64). In this he made an error of law, by failing to apply to the register at St. Louis, where the plat of the 18th of April, 1842, represented the fr a . sec. 9, as land claimed by Carondelet.

Mr. McPherson had another plat made in the Surveyor General's office, 11th December, 1849 (Rec., p. 39), leaving off the words that frac. sec. 9 was *land claimed* by Carondelet. The old plat of 1842 was in the register's office, and the pre-emptions of Delor, Chartrand and fifteen others, all of which had been rejected by the register and receiver, because the land was reserved from sale or entry and claimed by Corondelet as commons. The location could not have been made in the register's office at St. Louis, and McPherson knew it.

It was on the new plat of 1849 that Mr. McPherson made his journey to Jefferson City and to Washington, so as to avoid the honest and incorruptible register, Richard B. Dallam, at St. Louis. He suffered these extra expenses, in order to defeat the pre-emption of Thos. Chartrand, which was visible to all in the neighborhood, with its inclosure, about seven acres, on the west of the St Louis and Carondelet road, and a house standing on the southern part of the land. Beside this, in 1850, McPherson made a copy of a petition of the inhabitants of Carondelet, of March 4, 1848, to the Senate of the United States, stating their claim to commons north of Brown's survey, up to the Sugar Loaf Mound. (Rec. S. C. U. S., p. 102.)

Mr. McPherson's testimony is found at p. 101 of Rec., *id.*, and is as follows: "Being duly sworn, says that he applied in 1850 for a copy of this, and compared that copy with the original. I compared this copy with the other copy, and believe it to be a copy of the original."

This testimony is conclusive evidence, that McPherson knew of the claim of Carondelet to commons in 1850. The evidence in this case shows that no paper concerning the commons of Carondelet existed any where that he did not find. The old poll-books, minutes of the board of trustees, pre-emption of Delor in 1847, and other papers, were always at his command when a contested point was raised. He could not avoid seeing Chartrand's house and improvements from the road.

On the trial of this cause Mr. McPherson swore (Rec. p. 161) that he possessed the eastern part of this frac. sec. 9, from 1848 or 1850. Tuttle, the tenant of McPherson, says he first took half an acre to an acre and a-half in northwest corner of frac. sec.

9, and that he held possession of all the fractional section east of Chartrand's inclosure of about eight acres, from 1850 to the date of trial in 1871; and on the 28th of June, 1850 (Record, p. 106), Mr. McPherson made a deed to Thomas Chartrand, Jr., containing this recital, in substance (p. 106), that Thomas Chartrand in his lifetime had inclosed a part of the western end of fractional section 9, and by means of his settlement and possession claimed the land; that said possession and settlement were continued by Thomas Chartrand, Jr., for himself and the other heirs of his father and McPherson procured a deed from Thomas Chartrand, Jr., relinquishing his claim to the eastern portion of said fractional section 9. It is impossible to suppose, in view of these facts, that McPherson did not know of the Chartrand pre-emption, on which there was a house and inclosure at the west end, when McPherson put Tuttle into possession of the east end in 1848. (Rec. p. 70.)

The possession of Tuttle, tenant of McPherson, only covered one acre of ground, in the northeast corner of fractional section 9 (Record, p. 70).

The foregoing history of the proceedings by McPherson to procure the State location and the patent of 1850, and the proceedings of the city of Carondelet to establish her claim for commons north of Brown's survey therefor in 1834, operated to reserve said fractional section 9 from the said State location, and from all pre-emption entries and patents thereunder up to the spring of 1862.

McPherson's location for the State, and the patent to him thereon being void, the only remaining question in the case to be considered is, whether the Chartrand pre-emption is valid, so as to prevent McPherson claiming anything, under the statute of limitations, upon his possession of a part of the land since 1848 or '50.

The Chartrand pre-emption stands upon the acts of Congress of 1841-1853, and the decision of the Supreme Court of the United States, of 1862, and the proofs made of possession by the Chartrands, before and after 1862, and the patent issued by the United States to the Chartrand heirs in 1866.

The evidence in the record shows, that Thomas Chartrand lived on said frac. sec. 9 in 1835, because in that year, Thomas Chartrand's wife had twin sons born in the house on that land, and

Chartrand lived there for some years, cultivating the land (Rec. 46–7 dep. of Amable Chartrand taken May 1851).

Thomas Watson, United States Register of lands in St. Louis, testified March 7th, 1851 (Rec. p. 47) that "Thomas Chartrand, Jr., filed his declaration for pre-emption May 30th, 1846," the certificate of this declaration appears at pp. 93, 116.

Thomas Chartrand, Sr., purchased timber and materials to build a new house on said land in 1845 just before his death; Thomas Chartrand, Jr., built the new house in 1846 in the name of his father's heirs. In 1849 Thomas Chartrand erected another house on the land and moved into it. When he left it Andrew Chartrand his brother took possession and held it for the heirs (Rec. pp. 49–50). "Thomas Chartrand, Sr., resided on that land in 1835 and ever since that time he and his family have had a portion of it enclosed and in cultivation" (Rec. *Id.*)

Antoine Motier testified to the ancient possession of Thomas Chartrand, Sr., that he rented the house and land in 1834 of him for one year for $40, took possession of it, and gave it up to Thomas Chartrand, Sr., in 1835, who moved in with his family (Rec. pp. 50–1.)

On presentation of the above *ex parte* affidavits the register and receiver of the land office at St. Louis refused the pre-emption, because the land was reserved for the claim of the village of Carondelet to Commons under the act of 1812. This was the decision in 1846 and in 1851 by the register and receiver. And when the case was again presented in 1862 after this reservation for Commons was removed by the Sup. Court of the United States, in March 1862, by final decision in the said case of Carondelet v. St. Louis (1 Black 179,) so as to bring the pre-emption claims of the heirs of Thomas Chartrand within the provisions of the act of Congress of 1853 which brought the settlers on French or Spanish claims within the provisions of that act; and the register and receiver then stationed at Booneville, Mo., desiring to do justice to all parties, referred the matter back for further testimony and gave the complainant notice in writing, that evidence on the Chartrand pre-emption would be received before Thomas W. Levant, J. P., in Carondelet on the 9th of May 1862 (Rec. 51–9.)

Mr. McPherson did not appear under this notice, but the testimony was taken of the following witnesses:

Antoine Motier (Rec. pp. 53–4,)
Mistress Margaret Huston (Rec. pp. 54–5,)
Mistress Virginia Leffler (Rec. pp. 56–7,)
Michael Chartrand (Rec. p. 57,)
Thomas W. Levant (Rec. 57–8.)

This testimony is in substance as heretofore stated, showing all facts required by the statute.

McPherson made his affidavit, stating that he was not present, under the notice given to him, that his rights under the State location were prejudiced by said affidavits, and that he could not attend at the time designated in the notice (Rec. p. 60.)

On the 9th day of July, 1862, the United States register and receiver, at Booneville, acting under instructions from Commissioner of the General Land Office caused another notice in writing to be served on McPherson, under the Chartrand claims for pre-emption; that on the 25th day of August 1862 depositions would be taken before United States Commissioner Hickman in support of the pre-emption claim of the Chartrand heirs. In obedience to which notice the complainant appeared in person and by mutual consent and agreement depositions were taken on the 18th of September and days following. (See Rec. p. 63.)

This evidence is more in detail but there is no essential difference from that already set out, and the complainant does not attempt to impugn the veracity of any witnesses, or to show there was any subornation of perjury, or to show there was any imposition upon the land department, but seeks to destroy its effect by rebutting testimony, and puts the land officers to the task of deciding upon its sufficiency or insufficiency, to obtain a pre-emption and patent.

Under the notice of July, 1862, the evidence of witnesses was again taken, and the same testimony was given as before adduced in support of the pre-emption claim of the Chartrands. *Antoine Motier*, whose testimony was before abstracted, gave substantially the same evidence, with the addition, brought out by cross-examination of McPherson, that it was generally known that Thomas Chartrand, Sen., made efforts to enter the land—and may have

shown his certificate to witness—testified as to Mrs. Margaret Huston's age, good character and respectability. (Rec. p. 64.)

Miss Louisa Creely frequently visited Thomas Chartrand, Jr. on fractional section 9; he was holding for himself and heirs of Thomas Chartrand, Sr., deceased; knew that Chartrand had a house and land on frac. section 9; this was in 1849 or 1850; testified of Mrs. Huston's indisposition when her deposition was taken by Justice Levant, at the house of witness' mother. (Rec. p. 68.)

Mrs. Virginia Leffler was again examined before Commissioner Hickman, on the 10th day of September, 1862, both parties appearing, and on examination and cross-examination gave testimony substantially and in almost every particular the same as before Justice Levant in the preceding May, and in addition says: "Twenty-two or three years ago my husband moved in the house on fractional section nine with Thomas Chartrand, Sr., deceased." And on cross-examination by respondent McPherson, says her husband lived on the east side of the Stringtown road, on fractional section nine, and cultivated about seven acres under Chartrand, Sr. Knows of no one except Chartrand claiming ownership of that land. (Rec. p. 69.)

Michael Chartrand, one of the heirs of Thomas Chartrand, Sr., who had sold his interest to his brother Antoine, was permitted to testify. There is no evidence that the patent was granted on his testimony, or that the officers were influenced thereby. But if his testimony was illegal, which we deny, before the officers of the land department, it was competent before the Circuit Court to disprove fraud and to corroborate the testimony of witnesses produced to establish the pre-emption claim.

He says his father was the owner of the land in fractional sec. 9 and tried to enter it on two different occasions, but was not permitted by the land officers—the first time prior to 1840, and the second time in 1841 or 1842; is positive of that, for the last time he was with his father, who had two or three witnesses with him for the purpose of establishing the claim.

On cross-examination by the respondent McPherson, he speaks of this in detail, gives the names of the witnesses and the circumstances. He was then a boy about fourteen years of age.

Barada, from whom Chartrand purchased the house and improvements on this fractional section 9, is named by Michael as one of his father's witnesses.

Michael Chartrand's testimony. (Record, pp. 75, 90.)

Peter D. Barada brought before Commissioner Hickmann and before the St. Louis Circuit Court by the respondent to disprove the pre-emption right of Thomas Chartrand, Sr., says, that his father built a small house on frac. sec. 9 for one Malquimot, who made a small improvement, and afterwards Honore, brother of Peter, built a larger house about 1826, and made a larger improvement, all of which he sold to Thomas Chartrand, Sr. (Rec. pp. 78, 159, 171.)

Thomas W. Lenant knew Thomas Chartrand, Sr., from the year 1840 until his death in 1845 or 46; Chartrand was the owner of frac. sec. 9, went out on this land with him in 1844; Chartrand had a tenant on the land; there were two houses on it near the Stringtown road; went to the Mexican war, and when he returned, the Chartrand heirs were in possession; old man Chartrand was an illiterate man and generally got witness to read his papers; in this way saw a paper given to Chartrand from the land office as evidence of his pre-emption claim; thinks, that the certificate was signed by R. B. Dallam. (See Rec. p. 170.)

The respondent, in order to defeat the claim of the pre-emptors, introduced H. W. Leffingwell (Rec. p. 81), who tries by survey to show, that Chartrand's house was not on frac. sec. 9, but south of it. (Ex. B, No. 2, Rec. p. 94.)

In this particular, the proof, that the house was on frac. sec. 9, is overwhelming and cannot be contradicted. (See W. H. Cozzen's testimony and plat, Rec. p. 115, J. C. Ivory's testimony, Rec. pp. 86–7, Virginia Laffler, Rec. p. 69, St. Jean Pigeon, Rec. p. 88, and Michael Chartrand, Rec. p. 176,) all going to show beyond doubt, the location of the Chartrand houses to be as laid down on the plat, made by Cozzens. (Rec. p. 115.)

The respondent introduced in evidence the poll-books of the town of Carondelet, to show that old man Chartrand could not have resided on fractional section 9, within the town commons, and must have resided in Carondelet because he voted at town elections. The

books show that he voted every year in Carondelet, from 1836 until 1845, except in the year 1838, and that he lived on fractional section 9. Carondelet was incorporated by act of 13th June, 1812, so as to include the village lots, out-lots, common-field lots and commons, in, adjoining and belonging to said town. Each man living on the field lots or the commons claimed and exercised the right to vote at the town elections.

Such is the evidence in this case, taken at intervals during a long period of time, probably twenty years — a fact which might be construed against the pre-empting claimants, had the way of entry been clear, which was not the case. The land was in controversy between the cities of St. Louis and Carondelet during nearly, if not all this period, and the land declared to be not subject to entry until the year 1862. (See Record of controversy between St. Louis and Carondelet; Record, pp. 1 to 270 S. C. U. S.)

Such is the character of the testimony introduced to obtain the pre-emption patent, by the witnesses who lived in the town of Carondelet or near it all their lives, and who could have been assailed and shown unworthy of credit, either before the United States Commissioner or before the St. Louis Circuit Court, if there had been anything against them. The respondent was before both tribunals in force, and before the land department of the United States, and before the Secretary of the Interior, with the best legal talent that he could find, among whom were Messrs. Glover, Shepley, Beard, and Gen. Thomas Ewing, Jr., but the several officers of the Land Department and the Secretary of the Interior—after years of examination, induced by McPherson's claiming that his State location should take precedence over Chartrand's pre-emption —decided against the State location and in favor of the pre-emption, upon the evidence of inhabitation, improvement, settlement, building houses upon it, and inclosing over seven acres of it, and making and filing a written declaration of pre-emption in 1841 and in 1846, and proving up the pre-emption in 1851 and in 1862.

See evidence of Antoine Motier, Peter D. Barada, Amable Chartrand, Margaret Huston, Mrs. T. W. Levant, Mrs. Virginia Leffler, Thomas W. Levant, John Eppes Cowan and Michael Chartrand, already cited.

The settlement, house building, inhabitation, inclosing the land and improvements continued from 1835, until the final proofs of pre-emption were taken in 1862 and 1863. The patent was issued July 21st, 1866.

PROPOSITIONS OF LAW.

1st. The State location by McPherson as agent for the State is void, for the following reasons:

(A.) It is not on land subject to sale or entry. The land was not public land in 1850, but was reserved from sale, entry or location, being a part of the commons of Carondelet, a Spanish village, having commons and common fields, adjoining on the south the common fields of St. Louis, another Spanish village, now the city of St. Louis. The dividing line between these two commons was surveyed in Spanish times, 1794 and 1795, and a fence was built on the line of division in 1795, from the Sugar-Loaf Mound on the Mississippi to the common-field lots of Carondelet on the west.

In 1821 United States surveys were made of the townships 43, 44 and 45, embracing Carondelet and St. Louis, so as to include the village lots, out lots, common-field lots and commons of each village according to the first section of the act of the 13th of June, 1812, and on the plats of said surveys the old division line of survey was laid down. (Wm. Milburn's testimony, pp. 262–3; A. H. Evans' testimony, pp. 233–4, Rec. U. S. S. C. in this Record.)

The testimony of the old witnesses in said record establish the existence of these Carondelet commons before 1803. (See testimony Rec. U. S S. C. already cited of Pierre Chouteau *et al.*)

(B.) The grant, therefore, was complete for these commons to Carondelet north of the village on the 13th of June, 1812, and vested the title in Carondelet. This is admitted in the record of the case of *Carondelet v. St. Louis*, a part of this record.

The Spanish survey of the division line between the commons of St. Louis and of Carondelet in 1794–5, the Spanish surveys of the Carondelet common-field lots west of the Mississippi and the village of Carondelet on the south, made a complete inclosure of these north commons of Carondelet in Spanish times.

The first instruction given for the plaintiff in that case in the St. Louis Land Court declared that "all the right, title and inter-

est of the United States in and to the commons of Carondelet was vested in the inhabitants of Carondelet on the 13th day of June, 1812, according to the extent and boundaries of the said commons as they existed and had been claimed and used by the said inhabitants in common prior to and until the 20th day of December, 1803." (See Rec. U. S. S. C.)

Under this instruction the jury were bound to find for the city of Carondelet; but the court gave an instruction for St. Louis, that if Carondelet had accepted the survey of Brown of 1834, this was an estoppel precluding Carondelet from recovering the land north of said survey of 1834. The land in suit and about 400 acres more were within the old Spanish commons of Carondelet, and north of Brown's survey of 1834.

The land sued for was therefore granted to Carondelet on the 13th of June, 1812, as commons of the village, existing and used as such in Spanish times; and the claim of Carondelet remained valid until the spring of 1862, when the Supreme Court of the United States decided that this title was lost by Carondelet under the doctrine of estoppel.

Carondelet v. St. Louis, 1 Black, 179.

As to the grant being perfect by the act of 1812, see the following cases:

Bird v. Montgomery, 6 Mo. 511.
Chouteau v. Eckhart, 2 How. 421, 450.
Guitard v. Stoddard, 16 How. 494.
West v. Cochran, 17 How. 416, 17.
Carondelet v. St. Louis, 25 Mo. 448.
Same case, 1 Black, 179.
Milburn v. Hortez, 23 Mo. 532.
Same case, 1 Black, 595.

(C.) The commons of Carondelet, on the south of the village, were never surveyed in Spanish times further south than the river *Des Peres*, though the limits; called for in the letter, December, 1796, of Zenon Trudeau, Lieutenant-Gov. of Upper Louisiana, at St. Louis; were 150 arpents south of the southwest corner of the Carondelet common-field lots. South of the river Des Peres the commons of the village may be said to have been vague until the United States made an official survey; but there was no vagueness

or uncertainty in the location of the commons north of the river Des Peres, or north of the Spanish village, at any time. Before the decision in 1 Black, 179, they extended north to the Sugar-Loaf Mound; after that decision, the United States Supreme Court removed the claim of Carondelet to the commons north of Brown's Survey of 1834, and the land sued for became public land for the first time after 1795, and was subject to pre-emption under the acts of 1841 and 1853.

The case of Menard's Heirs v. Massey, 8 How. 294, has nothing to do with the question as to the effect of the confirmation of 1812 upon the land used as commons by a Spanish village prior to 1803; nor upon the question of the reservation of commons from sale, pre-emption, or location.

2d. The land in suit ought to have been included within an outboundary line, so run as to include the commons of Carondelet on the north of the town or village; but the failure of the United States Surveyor-General to do so does not divest the title of the village to the commons as they existed in Spanish times; the decision of 1862 alone divested that title.

The outboundary line of St. Louis, known as Map X, excludes common-field lots in the Grand Prairie and Barriere des Noyers' fields, valued at sixty millions of dollars, and this Court and the Supreme Court of the United States have held that the confirmations under the act of 1812, being grants *proprio vigore*, could not be affected by such survey of the outboundary line, inside of the true lines of the common fields.

Milburn v. Hortez, 23 Mo. 532.
Same case, 1 Black, 595, in point.
Page v. Scheibel, 11 Mo. 167.
Trotter v. Schools, 9 Mo. 69.

3d. It is therefore established by authority that these commons of Carondelet were not public land—were not subject to sale, entry, location, or pre-emption prior to 1862.

See also Kissell v. The Schools, 18 How. 25.

The State location of 1850 is therefore void, a nullity *ab initio*.

4th. If fractional section 9 had been public land in 1850, the location of McPherson would nevertheless be a nullity, because Chartrand's declaration and house and improvements would bar all right to make a State location under the act of pre-emption, 4th September, 1841.

See preceding statement of case.

5th. The State location was void for the further reason that it was made on the $37\frac{40}{100}$ acres, not on 320 acres, in violation of said act of 1841; that it was made with the Secretary of the Interior and Commissioner of the General Land Office, and not with the Register and Receiver at St. Louis, as required by law; and that it was made on this fractional section 9 at a time when it was expressly reserved from sale by the Commissioner of the General Land Office.

See preceding statement of case.

6th. The act of 3d of March, 1853 (vol. 10, U. S. Stat., p. 244), gave the Chartrands the right to pre-empt this fractional section 9, if they were *settlers* before or after the date of that act, as soon as the Supreme Court of the United States declared the claim of Carondelet to the same land, as commons, invalid. They were *settlers* and cultivators both before and after the date of that act of Congress.

In April, 1862, within thirty days after the decision in the Supreme Court of the United States in the case of Carondelet v. St. Louis, the children of Thomas Chartrand proceeded to prove up their pre-emption by order of the Register and Receiver, and established that the father and sons had been in possession of this fractional section 9 from 1835; that they had built two houses on the place; that two children had been born in a house on the place; that they had inhabited the houses, made improvements, inclosed the land in part to the extent of seven acres or more; that the original pre-emptor had died on the place in 1845, leaving seven sons, some one of whom continued to live in the new house built in 1846 on the place, up to the spring of 1862, when the bar against the allowance of their pre-emption was removed by the Supreme Court of the United States, as provided by the act of 1853.

McPherson, claiming under his State location, opposed the Chartrand pre-emption in all forms; he testified himself, cross-examined witnesses, filed briefs and arguments in person or by attorney, and after interposing all obstacles in his power the case was decided finally against the State location, and in favor of the pre-emption, on the facts, in June, 1866, and a patent issued upon the entry and Receiver's certificate of purchase on the 21st of July, 1866.

The facts to be inquired into were, whether the Chartrands—father and sons — were settlers on this land within the purview of the acts of 1853 and 1841. These facts were to be determined by the Register and Receiver, the Commissioner of the General Land Office, and the Secretary of the Interior.

The old possession from 1835 down to 1862, the declarations for pre-emption in 1841, 1846 and 1862, the State location of Mr. McPherson of 1850, all came under review, and the land officers of the Government found for the pre-emptors and against the State location.

This finding on the facts is conclusive upon the parties thereto, McPherson and the Chartrands, and never can be disputed by either of them.

In the case of Smiley v. Sampson (1 Nebraska, 65), Mr. Chief Justice Mason reviews all the cases of any note on this question very ably, and the court held that in all contested cases the decision of the land officers, to whom such questions were submitted by the acts of Congress, is conclusive upon the facts.

The Supreme Court of the United States approved this decision on writ of error in same case. (Sampson v. Smiley, 13 Wall. 91, 92.)

In the case of Johnson v. Towsley (13 Wall. 80–91), this question is reviewed by the Supreme Court of the United States in a writ of error to the Supreme Court of Nebraska, and the court held the decision of the land officers to be conclusive as to the facts, where the questions were contested. This is now the approved law of this case, and the court below had no power to pass on the facts decided by the proper officers of the land department of the United States, to whom such questions have been submitted by any act of Congress.

This court so held in the case of Hill v. Miller, (36 Mo. 182–3), and the same doctrine was affirmed in Stucker's case, (37 Mo. 160).

7th. The Chartrand pre-emption and patent therefore vested the title of the United States in the heirs of Thomas Chartrand on the 21st day of July, 1866, and no criticism of the validity of this pre-emption can be made by McPherson, who came in during the years 1848 or 1850, claiming adversely. The Chartrands had made their declaration on the 30th of May, 1846, as appears from the certificate of the Register, Thomas Watson. (Rec. p. 116.) They have proved other declarations filed as early as 1841, and their possession, improvements and houses have continued from 1835 to 1866.

These facts, being established by the record as well as by the testimony on the trial, make the pre-emption valid under the cases of Smiley v. Sampson, (1 Neb. 65), and Johnson v. Towsley, (13 Wall. 90). Read cases.

8th. The State location of McPherson in 1850 was invalid as against Chartrand's pre-emption, for the further reason that the act of September 4, 1841 (5 U. S. Stat. 455), did not convey the fee to any lands whatever, but left the land system of the United States in full operation as to regulation of titles, so as to prevent conflicting entries. When the State of Missouri issued a patent to McPherson, the State had no title.

Foley *et al.* v. Harrison *et al.*, 15 How. 443–4, 450 (1853.)
Wilcox v. Jackson, 13 Pet. 498.
Bagnell v. Broderick, 13 Pet. 436.
The Pacific RR. v. Lindell Heirs, 39 Mo. 330.
Hannibal & St. Jos. RR. v. Moore, 37 Mo. 338.

9th. In order to cure this defect in the State locations, Congress passed an act, August 3, 1854 (10 U. S. Stat. 346), declaring that "the lists of such lands which have been, or may hereafter be cer-"tified by the Commissioner of the General Land Office, under the "seal of said office, either as originals or copies of the originals or "records, shall be regarded as conveying the fee simple of all the "lands embraced in such lists that are of the character contem-"plated by such acts of Congress, and intended to be granted "thereby; but when lands embraced in such lists are not of the "character embraced by such acts of Congress (September 4, 1871, "and others), and are not intended to be granted thereby, said

"lists, so far as these lands are concerned, shall be perfectly *null* "*and void*, and no right, title, claim or interest shall be conveyed "thereby."

This act of Congress does not help the plaintiff, for this land was not subject to location, entry or pre-emption in 1841, 1850, or 1854; and the plaintiff has not shown that the lists of lands selected by the State under said act of 1841 have ever been certified to this State under the seal of said office, or that this frac. sec. 9 has ever been certified, as a part of any such lists, by said Commissioner, under the seal of his said office.

The plaintiff, therefore, stands before the Court without any title whatever from the United States or from the State of Missouri. Foley v. Harrison, (15 How. 443–4 to 451), decided thi propesition, in a case precisely parallel with this, at the December term, 1853, and the act of Congress of August, 1854, was passed to provide a mode for passing the title, by certified lists of the selected lands from the Commissioner of the General Land Office, to the State. But the plaintiff did not comply with this remedial act, nor procure any certified lists including this land, to be forwarded by the Commissioner to the Governor of the State. The certified lists may have included the five hundred thousand acres already located prior to 1850.

10th. As in the case of Foley v. Harrison, *supra*, the State of Missouri had established State land offices by the acts of March 27, 1843, (p. 77), and February 2, 1847, (p. 88), to sell the five hundred thousand acres of land located by the State.

The locations by the State were to be made by a State Commissioner in the office of the Register and Receiver of the United States, and the persons desiring to purchase these located lands from the State were required to enter them with the State Registers and Receivers of the State Land Offices in Sparta, Edina, Chillicothe and Springfield, and the lands to be selected were to lie in Platte, Buchanan, Andrew and Holt counties, and not elsewhere. (Act of 1843, pp. 78–9. §§ 1, 2, 3, 4, 5, 6.) This State law respected the pre-emptors under the laws of the United States, and section 11 provides a State law for pre-emption upon the selected lands, certified to the State.

The act of the State of February 2, 1847, makes further provisions for the State pre-emptions of the State locations. (See sections 1 to 6, p. 88.) And there is very little doubt that all the lands to be located under the act of the 4th of September, 1841, were located under the acts of Missouri, passed in 1843 and 1847.

It was the duty of the plaintiff to produce the certified copy of the lists of State locations, by Missouri, to show the title of the State, and that frac. sec. 9 was included in the certified lists. If this could have been done, the plaintiff would have proved the title of the State in this way.

The act of the 10th of March, 1849, (Mo. Laws, 64) was intended to authorize locations of all lands remaining to be selected, but no lands could be selected thereunder, in any other manner than that prescribed by act of the 4th of September, 1841.

Foley v. Harrison, 15 How. 443 to 450.

The United States Register and Receiver were the only officers authorized to allow a State location.

11th. Foley v. Harrison, *supra*, decides this case on all the other questions, and holds that the plaintiff claiming under patents from the State of Louisiana, issued upon locations made with the Register and Receiver of the United States under the donation act of September 4, 1841, could not prevail against the defendants claiming under the pre-emption laws, and a patent of the United States issued on a pre-emption entry.

In such a case as this the court held, that on a contest between the opposing parties before the Land Department the decision of the government officials was final, and that the State location was void if a settler was on the land with his house and improvements when the State patent issued, even if the land was then reserved from sale.

The court further held that the plaintiff could have no equity and could claim none, if the pre-emption settler was in possession when the plaintiff procured his State location.

Foley v. Harrison, 15 How. *supra* in point on same questions.

Robbins v. Bunn, 54 Ill. 48 (1870.)

Wilcox v. Jackson *ex dem.* McC., 13 Peters, 498.

Hill v. Miller, 36 Mo. 183.

Stucker v. Duncan, 37 Mo. 160.

The case of Foley v. Harrison, (15 How.), is therefore conclusive upon all the questions in this case, and runs parallel with it throughout; and being the decision of the Federal Supreme Court upon titles vested by acts of Congress, is binding upon this court, and determines this case in favor of defendants.

12th. The plaintiff's counsel seems to think the plaintiff had some claim under the statute of limitations. The inconsistency of this claim is manifest. The counsel says, *first*, that the Chartrands have no pre-emption, and argues that question at large. He says, *second*, the Chartrands had an existing pre-emption and could sue, and "from that moment" * * "the pre-emptor can sue, and the limitations begin to run."

This absurd argument defeats itself. The pre-emption of defendants was never perfected until the entry was made and the money paid in 1866. If the pre-emption existed, as Mr. Glover says in his Brief, (p. 17), and if a right of action existed thereon, the validity of that pre-emption cannot be questioned, as it has been, by the plaintiff. If the pre-emption did not exist, then there can be no prescription under the statute.

But the pre-emption and patent both took effect in 1866, and from that time only can the limitations begin to run. This is the express doctrine held in the case of Gibson v. Chouteau, (13 Wallace.) Prior to the patent of 21st July, 1866, the title to this land was in the United States, and on that day, for the first time, the title vested in the heirs of Thomas Chartrand.

Lytle v. Arkansas, 9 How. 314.
Foley v. Harrison, 15 How. 433.
Barnard v. Ashley, 18 How. 43.

13th. The plaintiff asks the court to remove the defendants' title as a cloud upon his title. But the plaintiff has no title and never had any, and defendants' title is perfect under a possession commenced fifteen years before plaintiff's illegal State location was made. There is no equity in this bill to warrant the exercise of this jurisdiction. These two claimants are adverse, and the title of defendants is perfect, and no trust for plaintiff, or wrongful act of defendants, has been shown. No privities, confidence or relations

of amity have been shown between these parties. Each claims, independently of the other, an adversary title; in such a case there is no cloud to be removed, but the question, in whatever form the action may be, is, which is the better title?

The merits of the title must be first examined. If plaintiff has no title, and defendant has it, there is no cloud to be removed, but an actual title to be examined and its effect to be determined. The universal practice has been to try the legal title at law in such cases as this.

Stoddard v. Chambers, 2 How. 284.
Stoddard v. Mills, 8 How. 345.
Bissell v. Penrose, 8 How. 317.
Barry v. Gamble, 3 How. 32.

14th. The plaintiff having a complete defence and remedy at law, if he have any title in the suits brought by defendants in ejectment against him for this land, has no right to file a bill in equity to test the question as to who has the better legal title.

In the cases last above cited, the parties claimed adversely under independent titles. Chambers, Mills, Penrose and Gamble claimed under patents of 1827, on New Madrid locations. Stoddard, Bissell and Barry claimed under confirmations of Spanish claims, by the act of 4th July, 1836. All these suits were in ejectment to test the validity of the legal titles held by the respective parties.

See also the following cases in ejectment:
Ballance v. Forsyth, 13 How. 18.
Bryan v. Forsyth, 19 How. 434.
Ballance v. Forsyth, *id.* 183 (in equity.)
Gregg v. Forsyth, Ejectment.
Kellogg v. Forsyth, *id.*
Dredge v. Forsyth, *id.*
Gregg v. Tesson, 1 Black, 150.
Kellogg v. Forsyth, 2 Black, 571.

These last cited cases arose thus: Forsyth and Tesson claimed under patents issued in 1845 and 1846, upon a confirming act to French settlers, passed March 3d, 1823. Ballance, Bryan, Kellogg, Gregg and Dredge claimed under entries and patents from the United States of 1838. These entries and patents were invalid

as against the junior patents to Forsyth, but the remedy of either party was held to be complete at law, in the action of ejectment, to test the question as to which party had the better title.

If the remedy was complete at law in those cases and the preceding cases, the remedy in this case must also be complete at law, and plaintiff's bill should be dismissed.

In Ballance v. Kellogg, 24 How. 184, the said Ballance, defendant in said ejectment suits, filed a bill in equity in the United States Circuit Court in the State of Illinois, to enjoin the execution of the judgment in Ballance v. Forsyth, 13 How. 24, and the Supreme Court of the United States held that the plaintiff had only his remedy at law and no remedy in equity.

24 How. 184–5.

The rule that plaintiff cannot resort to equity if he has an adequate remedy at law, when applied to this case, shows that the plaintiff's petition should be dismissed for want of equity at the costs of plaintiff.

If, however, the court should decide to hold jurisdiction in equity, then defendants ask the court to enter a decree reversing the decree of Judge Madill, and decreeing further that the plaintiff has no title to the land sued for from the United States; that the defendants have the title vested in them by the patent of the United States, of the 21st of July, 1866, and that the plaintiff is not entitled to have the title of defendants divested and vested in the plaintiff; and the court should further decree that the plaintiff's petition be dismissed with costs.

BRITTON A. HILL,

Of Counsel for ~~Appellants.~~

ST. LOUIS, April 9, 1873.

Mar 1. 1875. Defts in Error

IN THE

SUPREME COURT OF THE UNITED STATES.

OF OCTOBER TERM 1874, NO. 374.

JOHN R. SHEPLEY *et al.*, *Trustees, under the will of* WM. M. MCPHERSON, *Plaintiffs in Error,*

vs.

JOHN EPES COWAN, MICHAEL CHARTRAND, *et al.*, *Defendants in Error.*

ERROR TO THE SUPREME COURT OF MISSOURI.

Suit in equity to annul the title of defendants under the Chartrand pre-emption and patent of 1866, and to validate the State location of the same land in 1850 for McPherson.

APPENDIX to Brief of BRITTON A. HILL, in the State Supreme Court of Missouri, on the same questions now raised by the complainants.

This case was originally heard in equity before Judge Madill, in the Circuit Court of St. Louis County, when a decree was entered for the complainant which was affirmed *pro forma* in General Term, and on appeal to the Supreme Court of Missouri, the bill was dismissed and the judgment was reversed. (See decision of the State Supreme Court, 52 Mo. Rep. in this case entitled *Shepley et al.* vs. *Cowan and Chartrand et al*, pp. 559, 574; and the Briefs of Britton A. Hill and Charles C. Whittelsey for the defendants, as reported in the case.)

It appears that both parties claim under independent legal titles, wholly adverse to each other. There is no equitable jurisdiction whatever in such a case. (See p. 27, points 13th and 14th, of B. A. Hill's Brief, in State Supreme Court.)

The pre-emption was commenced by building a house and occupying the land in question for 31 years, until the patent was issued in 1866. The complainants' State location of 1850 was void, as made on a pre-emption; and the pre-emption was made valid by the act of Congress of 1853, and by the decision of the Supreme Court of the United States in the case cited, in 1862, releasing the land from the claim of Carondelet. (See Brief, pp. 19 to 27.)

The defendant Cowan has no interest in the Chartrand pre-emption and patent. The Chartrands and Hogan, their grantee, are the only parties having any title to the pre-emption.

The State Supreme Court has rendered a judgment under the principles decided by this Court in the cases cited.

The judgment of the Supreme Court of the State of Missouri, reversing the judgment of the Circuit Court, and dismissing the bill, should be affirmed.

BRITTON A. HILL,
Of Counsel for Defendants in Error.

St. Louis, March 1st, 1875.

IN THE

Supreme Court of the United States.

No. 141.—October Term, 1875.

John R. Shepley and others, trustees under the will of Wm. M. McPherson, dec'd, Plaintiffs in Error,
vs.
John Epes Cowan and others.

In error to the Supreme Court of the State of Missouri.

Brief of Montgomery Blair, of Counsel for Defendants in Error.

Pleadings.

This is a bill in equity, brought by plaintiffs in error in the Circuit Court of St. Louis County, on 24th January, 1870, to vest in them all title, real or pretended, which is held by said defendants in virtue of a patent dated July 21, 1866, issued by the United States for the fractional section of land 9, T. 44, R. 7, containing $37\frac{40}{100}$ acres, lying between the commons of St. Louis and Carondelet, as finally surveyed, in virtue of settlement and a pre-emption claim made thereon by Thomas Chartrand, deceased.

The grounds alleged in plaintiff's bill for vesting in him the title derived from said patent to Thomas Chartrand's representatives are that he is the owner in possession of said land, having acquired title under the state,

for which he had selected it as a part of the 500,000 acres granted by the act of 1841, and that neither the said Chartrand nor his representatives had any right to pre-empt said land, and that the evidence by which said right was established before the Land Department (all of which is shown by exhibit No. 9) fails to show any such right; and that the department, in deciding that it did establish such right, committed gross errors of law and fact; and that the allowance of such pre-emption was procured by collusion, fraud, misrepresentation, and deceit, and that the title so obtained is by false clamor made a cloud on plaintiff's title.

The answer of defendant Cowan admits the selection of the land by McPherson, on account of the state, and the issue of the patent by the governor of the state to him, and that the selection had been approved by the proper authority of the United States, subject, however, to the right of pre-emption of all persons who had at the time such right in the land, but denies that McPherson acquired any title by these proceedings; and defendant avers that Thomas Chartrand, senior, had in his lifetime the right to pre-empt the same by having occupied and improved it as early as 1834, and continuing to hold and occupy the same until he died, in 1845. That said Thomas Chartrand, senior, made application in due form to prove his right of pre-emption to the proper land office, and to pay for the same, but that his application was refused. That after his death his children continued to occupy the land and to prosecute his right until, by the decision of the proper officers, it was finally established and the patent issued to them.

The other defendants deny that the land was granted to the State of Missouri; that it was relinquished to the plaintiff by the state; that the governor had authority to give notice of the selection; and aver that all the proceedings relating to such selection and patenting to plaintiff were illegal, and conferred no title on plaintiff; that

the land was not subject to the location attempted by plaintiff, and that it was rightfully claimed by Chartrand and legally patented to his heirs. Also, that said pre-emption claim was older than said plaintiff's claim, and must prevail in law and equity; and that the decision of the Secretary of the Interior on Chartrand's pre-emption was conclusive of its validity and correctness upon the plaintiff; that said plaintiff contested the granting of said pre-emption to Chartrand before the said Land Department; that the finding of the facts settled by the Land Department, upon which the pre-emption was allowed, is record evidence and conclusive proof that Chartrand did make the settlement and improve and cultivate, as decided by said department; and the defendants denied that the land officers acted illegally in allowing said pre-emption.

The plaintiff, for replication to Cowan, denies that Chartrand or his children had any right of pre-emption, or made legal proof of such right; and for replication to the other defendants denies that the grant to the state, and by the state to him, was void, and that Chartrand had made the settlement claimed, or that the decision of the Land Department was conclusive of anything.

Statement.

The plaintiff in error claimed title from the State of Missouri, for which state he selected this land in lieu of 320 acres, relinquishing the difference of $282\frac{60}{100}$ acres, December 15, 1849, as part of the 500,000 acres granted by the 8th section of the act of 1841, (5 Stat., 453,) within the limits of the state, in parcels "of not less than three hundred and twenty acres in any one location, *on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States,*" *&c.*

The selection was approved by Thomas Ewing, Secretary of the Interior, January 17, 1850, (p. 13,) "*subject to*

any right which may have existed at the time the same was made known to the general land officers by the agent of the state," and a patent was issued by the governor of Missouri to McPherson, 27th February, 1850.

At the time of this selection Carondelet claimed the land as part of its commons, and it was reserved from entry of any kind to satisfy that claim. See letter of register, July 27, 1847, declining to receive the declaratory statement of Delor for that reason, (p. 75,) which action was approved by the commissioner, August 6, 1847.—(p. 76.) Chartrand had previously claimed the right of pre-emption of the land under the act of 1838, and his son, Thomas Chartrand, junior, continued his claim for the benefit of all his heirs under the act of 1841; (see certificate of the register, p. 56;) and Chartrand's claim was by him received conditionally, "subject to the decision of the department respecting the Carondelet claim thereto," which decision was not made till the 23d of February, 1855, (p. 305,) was then referred to the courts, (p. 304,) and was not determined by the court till March, 1862.—(1 Black, 189.)

The commons of Carondelet were surveyed by Elias Rector in 1816, (p. 148,) and the survey was retraced and connected with the adjoining surveys of public land by Jos. C. Brown in 1834.—(pp. 151, 306.) On the 20th of January, 1841, (p. 277,) the Commissioner of the General Land Office instructed the surveyor-general to reserve about 6,000 arpents of this tract to be granted by Congress to Carondelet for commons; to retain 1,702 acres of it as a site for Jefferson Barracks; and that "the balance of the unappropriated land without these limits, and included in Rector and Brown's survey, which amounts to several thousand acres, be reserved and sold as public land." On the 1st of September, 1845, the commissioner informed the surveyor-general that he had refused to instruct him to carry out the instructions of January 20, 1841; and on the 14th February, 1846, (p. 293,) he held

"that the lands within Rector and Brown's survey are not subject to pre-emption and ordinary entries." On the 24th August, 1848, (pp. 291, 298,) the commissioner again decided not only that the lands *within* Brown's survey of the commons of Carondelet were not subject to pre-emption or ordinary entry, but that "the lands *supposed to be vacant between the commons of Carondelet and those of St. Louis*," "*were (also) reserved from sale or entry of any kind to satisfy the claim of the town of Carondelet under the acts of June*, 1812, *and 26th May*, 1824." The Commissioner of the General Land Office, by the 4th paragraph of his circular of 4th August, 1847, prohibited state selections "upon any tract if reserved or withdrawn from market for any purpose whatever;" and the 3d paragraph required them "to be based upon official township plats * * on file in the local land office; and the 5th required the local officers to examine the plats * * and see that such selections are in all respects free from such objection; and the 8th paragraph required the application for selections to be filed in the local office and to be certified by the register, and thence to be forwarded by him to the General Land Office to be submitted to the Secretary of the Interior."—(p. 17.)

On 30th January, 1852, (p. 299,) the city of Carondelet, by her counsel, Messrs. George Primm and Williams, pressed its claim to have the land here in controversy included in the survey of its commons. On the 4th of March, 1852, (p. 301,) the commissioner replied, saying that the consideration of this application "is deferred, at the request of Wm. M. McPherson, Esq., attorney for St. Louis, until May next."

On the 8th of June, 1852, (p. 304,) the commissioner decided against the claim of Carondelet to this land, holding that "the question of limits (of the commons) on the north ought to be treated by the department as settled, *so far as the executive action is concerned*, and that the inhabitants are estopped from a new survey as now ap-

plied for." On the 25th January, 1853, (p. 288,) the Secretary of the Interior disapproved of this decision of the commissioner, and directed a new survey to be made of 6,000 arpents, but without directing how it should be made. On 23d March, 1853, (p. 288,) the surveyor-general asked instructions as to how the new survey should be made, and stated it to be his opinion (p. 290) that a new survey should include the land here in controversy as part of Carondelet commons.—(p. 69.) This letter was submitted to the Secretary of the Interior on the 2d of April, 1854, and that officer re-examined the whole subject, and on the 23d February, 1855, (p. 305,) revoked the decision of his predecessor of 25th January, 1853, and affirmed that of the commissioner of 8th June, 1852, which decided against the new survey.

Chartrand's application to the register to be allowed to prove up his pre-emption was renewed and refused in April, 1849, and again in 1850.—(Cowan's affidavit, p. 23.) On the last occasion it was discovered that McPherson had been permitted to locate the land. Chartrand's counsel then asked the department to order the local officers to receive and act upon his claim.—(p. 69.) And their counsel charged (see letter of M. and F. P. Blair, jr., p. 24) that McPherson had succeeded in getting the patent over the heads of persons whom he knew to be entitled to a pre-emption, by unfair means. He did not apply at the local office as required by the regulations of the Land Department, (1 Lester, p. 502,) where the pre-emption claim was pending, and action suspended, because that office was notified by the surveyor-general (p. 75) that the land was claimed by Carondelet, and had instructions from the commissioner (p. 76) to reserve it from sale, and had refused to allow it entered, but applied directly to the Land Department, with a township plat obtained from the surveyor-general's office, which did not show the claim of Carondelet to the land, or the order reserving it on account of that claim. On

20th August, 1851, the Secretary of the Interior (p. 69) referred the motion of Chartrand's counsel to allow them to prove up their pre-emption before the local officers, and the affidavits in support of it, to the commissioner. No action was taken by the commissioner till the secretary called for a report; when, on 31st December, 1853, a report was made.—(p. 70.) On 24th March, 1854, a further examination was called for, which was subsequently made. But no decision was arrived at till 10th December, 1860, when the secretary declined taking any action.—(p. 70.)

On the 16th February, 1855, (p. 118,) Carondelet brought suit in the St. Louis land court against the city of St. Louis, claiming that its commons included the land here in controversy and part of the land set off by United States survey to St. Louis as commons, which suit was finally decided against Carondelet by this court in 1862, (1 Black, 187,) on the same ground upon which the new survey had been denied by the Land Department. After the rejection of the claim of Carondelet to the land in question by the Land Department had been affirmed by this court, the register and receiver were allowed to receive the proof so often tendered by the representatives of Chartrand to establish their right of pre-emption to the land; and on the 20th November, 1863, (p. 21,) those officers, after reciting that notice had been given to McPherson and Delor of the taking of the testimony in the case, upon which they had acted and which they forwarded to the department, say that "it appears from the testimony that Thomas Chartrand, senior, purchased this land of Louis or Honoré Barada, about the year 1829 or 1830; leased the same; received rent for it, and afterwards moved on it with his family, and maintained undisputed possession of it to the time of his death, which took place in 1845. It also appears that he made application to the land office with witnesses to prove up his pre-emption and enter the land,

but was refused by the land officers. The testimony on these points seems to be conclusive; and consequently we are of opinion that Chartrand acquired the right of pre-emption to the land. It also appears that Thomas Chartrand, junior, as executor of his father's estate, applied to enter the land for the benefit of the heirs, but was refused by the land officers. In view of these facts, we decide that the claimants are entitled to enter the land under the second section of the act of 1843."

From this decision McPherson took an appeal to the Commissioner of the General Land Office, and filed additional evidence on his side of the case, argued the case himself, and was aided by able and experienced counsel. But after sixteen months' consideration the commissioner approved the decision of the register and receiver, on the 22d March, 1865.—(p. 69.) McPherson then appealed to the Secretary of the Interior, and continued the contest with increased energy for fifteen months and until the 4th day of June, 1866, when the secretary affirmed the decision of the commissioner.—(p. 73.) The witnesses by whose testimony this conclusion was established in the minds of so many officers, were numerous, and were thoroughly cross-examined by McPherson, who also introduced many witnesses to contradict their testimony. The deed to Thomas Chartrand, junior, conveying him, in trust for himself and other heirs of his father, four arpents of this land in consideration of his abandoning the claim, was also put in proof.—(p. 51.) In this deed McPherson recites that Thomas Chartrand, senior, had in his life-time inclosed a part of the land, and "by means of his inclosure, possession, and cultivation, made claim to said land, * * and said possession and claim being continued by Thomas Chartrand, junior, for himself and other heirs of his father," and that McPherson did not know of the elder Chartrand's possession, &c.

There is no evidence in the record tending to support the plaintiff's allegation "that the allowance of said pre-

emption and entry of the land by means thereof, and the patent thereon, was procured by said defendants by collusion, fraud, misrepresentation, and deceit;" and at the trial below it was only claimed "that the evidence brought by the Chartrand heirs in support of their claim to pre-emption will show the court that the evidence shows no pre-emption right in the land by Chartrand or his heirs."—(Plaintiff's Brief, p. 6.)

Residence upon the Land.

It was in proof by Levant, a justice of the peace residing in Carondelet, (pp. 27, 113,) that Chartrand, senior, had possession of the land in 1840 and 1844, and had then two houses on it; that Thomas Leffler was on it as Chartrand's tenant; that Thomas Chartrand, jr., was in possession after his father's death, in 1845, put up a new building and resided in it in 1848, when witness returned from the war. On cross-examination says Chartrand's residence on this tract did not prevent him being a member of the council in Carondelet.

Mrs. Levant, a midwife, (p. 350,) attended Mrs. Chartrand in her confinement whilst residing on the land.

Michael Chartrand says (p. 113) that his father moved on the land in 1835; that his twin brothers, Felix and Paschal, were born there. Leffler occupied four or five years as his father's tenant, and after him other tenants until his father's death, in 1845; that his father did not live on the land after 1838, but after that year held it by his tenants. After his death Thomas, jr., lived on it and held it till his death, in 1855. He built a new house on the land in 1846. The other sons took and held possession successively for the family. First heard of McPherson's possession on the east end when he, McPherson, applied to the authorities of Carondelet in 1849 (of which witness was the register) to get a lease from the town. On cross-examination said the old inhabitants

voted in Carondelet, no matter where they lived. Thomas, jr., and the other sons, all held for the heirs of Thomas, sr.

Margaret Huston says (p. 26): Two of Chartrand's children, (the twins,) who are now (in 1862) 27 years of age, were born on the land. (This would be about the year 1835.) That he continued in possession of the land until his death, in 1845, and was preparing to build a new house when he died; that Thomas, jr., succeeded to the possession of his father as his executor, and resided on it until about the year 1849, when he surrendered it to his brother Andrew, and that one or another of the sons has continued to occupy it for the heirs till the present time.

Virginia Leffler (p. 26) and her husband resided with Thomas Chartrand on the land as tenants for one year about 1839 or 1840. Their son lived on the land about the year 1850. The Chartrands alone, to her knowledge, claimed ownership.

Antoine Motier (p. 30) rented the land of Chartrand in 1834. After witness left, Chartrand moved on. Mrs. Huston was intimate with the Chartrand family, one of her daughters having married into it. Chartrand bought the place of Barada in 1829 or 1830. Barada, (p. 38,) witness for McPherson, also testifies to this purchase. Louisa Creely (p. 32) says land belonged to Thomas Chartrand, sr., and that she visited it frequently when Thomas, jr., lived there, about the year 1849.

Plaintiff attempted to show by Leffingwell, (p. 39,) Motier, (p. 35,) John Powsulli, (p. 35,) and Barada, (p. 38,) that Chartrand's house was south of this land, and by Barada (p. 108) that Chartrand was a member of the council in 1838; but this witness also knew that Chartrand lived out of town: whether during that year witness did not remember.

The cultivation was not controverted.

The location of the house of Thomas, sr., on the land is

controverted, but the testimony of Cozens, the county surveyor, (p. 38,) of Mrs. Leffler, (p. 41,) of Pigeon, (p. 42,) Michael Chartrand, (p. 113,) Isam Pigeon, (p. 42,) John C. Ivory, (p. 33,) Antoine Motier, (p 31,) and Thomas Levant, (pp. 28, 113,) fix it there.

Offers to Prove up the Pre-emption and the Refusal of the Officers to Receive the Proof.

Michael Chartrand states (pp 27 and 36) that he accompanied his father and his witnesses, Joseph Le Bland and Antoine Barada, to the land office to prove up his pre-emption, but that the officers refused to receive the proofs, and that his father had two certificates signed by land officers.

Cowen testifies (p 23) to two offers by Thomas, jr., to prove up and two refusals by the officers.

Watson's affidavit (p. 22) and his certificate (p. 56) fully establish Thomas, jr.'s, offer and the refusal of the land officers to receive the proof.

Levant (pp. 28, 113) saw certificate of pre-emption in possession of Thomas, sr., in 1844.

On the trial in the circuit court, when the plaintiff rested, (p. 109,) the defendants moved to dismiss the bill for want of equity, and for want of jurisdiction by the court. The motion was overruled, and the defendants excepted. The court gave judgment for the plaintiff.—(p. 12.) The defendants appealed to the supreme court of the state, (p. 355,) which court reversed the decision of the circuit court and dismissed the plaintiff's bill.—(p. 436.) The plaintiff has brought the case here by writ of error.

Argument.

The questions presented for the decision of this court are—

(1.) Whether the circuit court erred in overruling the

motion to dismiss the bill for want of equity and for want of jurisdiction.

(2.) Whether the state location is valid.

(3.) Whether the Chartrand title is not the better title.

I. Plaintiff contends that as no question of jurisdiction was raised either by demurrer or by the answer, the question could not be raised at the hearing, and cites authorities to show that the defence of remedy at law must be pleaded or set up by demurrer. But here we make not merely the defence of remedy at law, but we make the objection that the subject-matter is not of equitable jurisdiction, an objection which this court rules, in Betts vs. Lewis, (19 H., p. 75,) may be made at the hearing. In that case the court says: "The question whether a bill contains any equity *may* be raised by a demurrer. If the defendant answer, the question *cannot be raised till the hearing. Non constat*, that a defect may be removed before the hearing." In that case the answer had been filed, and exceptions to it were undisposed of when the motion to dismiss for want of equity was made and sustained. This was held to be error. And in Hart vs. Mallet, 2 Hay, 136, and Cummings vs. White, 4 Blackf., 356, it is held that if equity has not jurisdiction *of the subject-matter* of a suit, the defendant may object at any stage of the cause. The subject-matter of this suit is to remove a cloud from a title, and it has been decided that this is not the subject-matter of equitable jurisdiction by the Supreme Court of Missouri, in the case of Drake vs. Jones, 27 Mo., 432. In that case the plaintiff invoked the equitable jurisdiction of the court to prevent a sale of land by the sheriff, on the ground that the proceeding would put a cloud on the plaintiff's title, and the court decided that the removal or prevention of a cloud upon a title was not in Missouri the subject-matter of equitable jurisdiction, "because," says the court, "*our law has disarmed a person having no title of the power by false clamor to injure the title of another*

in that way. In the first place, provision is made with minute particularity for perpetuating testimony; and then, again, if the plaintiff is out of possession he may immediately bring his ejectment; but if he is in possession and wishes to silence an adverse claim, he may file a petition and compel him to bring an action to try the title, or be forever barred from claiming any right or title adverse to the petitioner."—(R. C., 1855, p. 1241, § 62.) This is decisive of the question here, the point ruled being the same now presented, and being the decision of the supreme court of the state as to the equitable jurisdiction of the state courts here under consideration.

The only answer to this is that in the case of Barnard's Heirs vs. Ashley, 18 H., 43, this court affirmed a decree canceling Barnard's junior patent. But that was a case brought up from the circuit court of the United States, and whose jurisdiction was not, like that of the state courts, regulated by the state statutes, nor does it appear that New York had, like Missouri, prescribed a statutory mode for disarming a person of the power to injure the title of another by "false clamor." Moreover, in that case the junior patentee brought the elder into court, claiming the better equity, and no question of jurisdiction was made at any stage of the case; and the court having found, on an inquiry invited by himself, that the plaintiff had no equity at all, it was competent on the prayer of defendant to avoid plaintiff's patent to prevent circuity of action. Here the elder patentee, being in possession, brings the junior into the state court to remove a cloud from his title by an equitable proceeding, instead of following the mode prescribed by statute, which the supreme court of the state has decided supersedes the equitable proceedings here resorted to.

II. *The state location was void—*

(1.) (*a*) Because the land was not subject to state location. The 8th section of the act of September 4, 1841,

which granted the land to the state, authorized the location of the quantity granted "on any public land, except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States."—(5 Stat., 453.) This land was claimed as commons by the village of Carondelet, and the Land Department had instructed the register and receiver at St. Louis that it "was reserved from sale *or entry of any kind* to satisfy the claim of the village of Carondelet under the acts of 13th June, 1812, and 26th May, 1824." It was accordingly withheld from sale or entry of any kind by those officers. The reservation was noted on the plat in the office so that the order could not be overlooked, and this order remained in force, and the claim of Carondelet remained undecided at the time McPherson was allowed to locate the land; and the offers of the defendants to prove up their pre-emption claim were made only a few months prior to McPherson's location, and another made shortly after the location, were refused by the local officers because the reservation continued; and similar offers and refusals previously made had been reported to the Land Department, and the refusals had been approved by that department.

(*b*) *This reservation was made by a law of Congress, or in pursuance of such law.*

The act of 13th June, 1812, (2 Stat., 748,) confirmed to private owners at St. Louis and other towns their town lots, &c., and also confirmed to the towns their commons, and made it the duty of the surveyor to survey and mark the out-building lines of the towns so as to include these lots and commons; and the act of 26th May, 1824, (4 Stat., 65,) again directed the surveyor-general to survey and designate the commons belonging to said towns. In pursuance of the first act a survey of the Carondelet commons was made by Rector in 1816, which embraced this land.—(See field notes, p. 148, and map marked p. 691.) By the township plats of 1821 it was also included in the

commons, but by the survey of 1834 it was excluded; and this survey, after a controversy of twenty years, extending far beyond the date of McPherson's location, was finally held to conclude Carondelet, not because it was correct, but because Carondelet had adopted it in its litigation and otherwise, and was, therefore, held to have accepted it. At the time of McPherson's location, therefore, the department charged by the acts above quoted with the duty of designating the land granted to Carondelet as commons had made conflicting surveys of the grant, two of which recognized the title of Carondelet to the land in dispute, and the other denied it, and the department was undecided which to adhere to; but it so far recognized the right of Carondelet as to forbid the sale or disposition of the land in any manner till the question should be fully adjudicated; and the plaintiff himself so far recognized Carondelet's title as to apply to Carondelet for a lease of the land. If the survey which included the land had been allowed to stand, it would not be doubted that the state location was void. But as its validity was at the time so far recognized by the department as to prohibit it from being sold or disposed of in any way, to enable the department to assign it to Carondelet absolutely if it found it proper to do so, it was, for the purposes of this question, in the same condition as if it had then been definitely assigned to Carondelet. The power given by the acts of 1812 and 1824 to set off the land granted, gave, also, necessarily the power to withhold from sale or other disposal all lands which, in the opinion of the department, might fall within the grant. Hence a reservation to satisfy the grant would avoid any location made whilst the reservation continued, as effectually as if the appropriation to the grant had been permanent.

(*c.*) Such an appropriation may be properly called a reservation by the acts of 1812 and 1824, being authorized by those acts. But if it were not *a reservation* within

the meaning of the act, it was assigned at the time by the proper authority to the satisfaction of a private claim, and had ceased to be "*public land*," upon which alone, by the terms of the grant, state locations could be made.

(*d.*) It was reserved "by proclamation of the President of the United States," the reservation being "made known to the public" by the authority of the President in the usual manner in which such reservations are made known. —(Kissell vs. Schools, 18 Howard, 27; Jackson vs. Wilcox, 13 P., 509.) These cases hold actual notice of the reservation to be unnecessary. It is enough that it is entered in the public records.

(2.) (*a.*) The location was also invalid because not made in accordance with the regulations of the department. No application, as required by the regulations above quoted, was filed in the register's office. No certificate of its correctness was given by that officer, and the required certificate was not laid before Mr. Thomas Ewing, the Secretary of the Interior, and approved by him. The application was presented with a certificate from the commissioner that the land was vacant, (p. 14,) which the evidence shows that McPherson knew he could not obtain from the proper office, for in that office the plat showed, *first*, the reservation for Carondelet; and, *second*, the pre-emption claim of defendants suspended for action on the first. The regulations which were violated to compass that scheme were made by the department in pursuance of law, and were, therefore, as obligatory as the law itself.

(*b.*) If the violation of these regulations would not, *per se*, annul the location, the circumstances under which they were violated in this case would annul it. These circumstances show that McPherson procured the violation of these regulations for a fraudulent purpose and by fraudulent means. He applied at Washington instead of at his home in St. Louis, knowing that the register

there would not allow and certify to the correctness of the selection, and accompanied his application at Washington with a plat prepared for the occasion, on which the reservation and pre-emption claim were not noted.

The remonstrance of the counsel of pre-emption claimants, charging McPherson with obtaining his patent over the heads of the pre-emptioners by unfair means, and the affidavits in support of the motion to be allowed to take testimony to maintain their rights, which were referred by the Secretary of the Interior to the commissioner, were never acted on by that officer for eighteen months, and then only because the secretary again called for a report. Such report was made that the investigation was refused; and it was not until 1862, eleven years after the application was made and when all the witnesses by whom the defendants had offered to prove their claim before the land officers were dead, that the investigation was allowed. McPherson testifies (p. 108) that he came here himself twice, besides employing Thomas Ewing, jr., and Henry Beard, as his counsel here about this claim. With such adversaries the pre-emptioners were obliged to sell their right to derive any benefit from it.

III. (1) The title under the pre-emption claim is the better title. It is founded on the older equity, as shown by the public records, of which the plaintiff must take notice. He had, also, actual notice of the claim, and concedes that it is the better title if valid, and controverts its validity only upon the ground that the testimony upon which it was allowed was insufficient. The validity of the title cannot be impeached on this ground. It is only when the conclusions of the land officers have been reached by a misconstruction of law, or procured by fraud or imposition, that this court has set them aside. It has never undertaken to review their conclusions as to facts found upon the weight of testimony, and when the same parties have fully contested the case from the local office up to

the secretary. Even in the case of Barnard's Heirs vs. Ashley, in which the court has gone farthest, the department had been imposed on by false and *ex-parte* testimony, and there was no controversy on the proof. With respect to the southwest quarter of section 15, in township 19, claimed by Barnard under Richmond, the occupation of Richmond on the 19th June, 1834, had been proved up by *ex-parte* affidavits, all in the same language, before the local officers, which were shown to be false at the trial; it appearing clearly that Richmond had sold out and gone off in January, and that there was no improvement on the land at all in June; and with respect to the southwest quarter of section 22, of township 18, Barnard's own witness, who had proved in similar *ex-parte* affidavits that he had occupied and cultivated in 1833, when afterwards examined before the register and receiver, dated his cultivation in 1834, which gave him no right to enter it. In this case all the witnesses, as to any disputed point, except Mrs. Huston, were cross-examined. She was an aged lady, whose deposition was taken in pursuance of notice, (p. 29,) at the taking of which McPherson did not attend, and she was unable to travel so as to appear before the commissioner for re-examination as the other witnesses did, in consequence of ill health.—(See deposition of Louisa Creely, p. 32.)

(2) But it is not necessary in this case to insist on the finality of the decision by the Land Department. The evidence in the record is ample to sustain that decision without requiring the court to allow even a presumption in its favor. By the first section of the act of June 22, 1838, "every actual settler of the public lands, being the head of a family, or over twenty-one years of age, who was in possession by personal residence thereon at the time of the passage of this act, and for four months next preceding, shall be entitled to all the benefits and privileges of an act entitled 'An act to grant pre-emption rights in the public lands,' approved May 29, 1830, and the said act is hereby revived and kept in force for two years."

The second section of the act of 1st June, 1840, provides "that in all cases where an individual may have made an improvement on the public lands, and afterwards leased or rented such improvement to another person who was in possession of the same on the 22d June, 1838, and for the four months next preceding, or when the lessor and the lessee together occupied such improvement during said four months, the person who made such improvement and so rented and leased the same shall be entitled to the right of pre-emption, notwithstanding he may have been out of possession of his improvement during said four months, or any part thereof."

It is not denied that Chartrand, sr., was shown to be a qualified pre-emptor, by citizenship and by being the head of a family. The only controversy is as to his having occupied the land in person or by tenant on the 22d June, 1838, and for four months prior thereto. It is not denied that he did so occupy and improve, and that his residence, if not within the fractional section in question, was only a few feet south of the line.—(See Leffingwell's map, locating Chartrand's residence on the testimony of plaintiff's witnesses.) Nor is there any question as to the site of the house. The only difference is that the official survey of Cozens included that site in the fractional section, whilst that of Leffingwell excluded it. The Land Department, by its decision, affirms the correctness of Cozens' survey, and on questions of survey the decision of that department is final.—(West vs. Cochran, 17 Howard, 403; Ballance vs. Kellogg, 24 ib., 185.) And the decision is sustained by the weight of testimony.

The only remaining question is whether the proof shows that Chartrand had possession by himself or tenant in June, 1838, and for four months prior thereto. It is conceded that he bought the land of Barada, (see testimony of Barada, plaintiff's witness,) and Motier, also subsequently called by plaintiff, proves that he, the witness, went on it under Chartrand in 1834, and that Chartrand entered it in person in 1835. This is confirmed by

Mrs. Huston, whose relations with the family enabled her to speak accurately, and by Michael Chartrand, both of whom say the twins, Felix and Paschal, were born on the land in that year, and fix the time by the age of the twins. Mrs. Levant, the midwife, says she attended Mrs. Chartrand on that occasion at that place. There can, therefore, be no doubt that Chartrand claimed to own the place, and lived on it in 1835 or 1836.

Michael Chartrand further testifies that his father continued to reside on the land in person from that time till after the year 1838. This is also confirmed by Mrs. Huston, and by Mrs. Leffler, who proves the fact that he continued to live there till after the 22d June, 1838, by saying she lived in the house with him there for a year about 1839, Leffler, her husband, being Chartrand's tenant, and cultivating the land. After that time, Michael says, his father rented it to other tenants till his death, when Thomas, junior, took possession, and having built the new house which his father had got some materials to commence, resided in it till 1849. This testimony is confirmed by register Watson's official certificate of 30th May, 1846, stating that Thomas, junior, claimed to have settled on the land on the 15th March preceding; by Mrs. Huston and by Levant, the justice of the peace, who testifies that Chartrand held the land when he first knew him, about 1840, and that he went over it with him in 1844, whilst it was occupied by his tenant; that Thomas, junior, succeeded his father in the possession in 1845 or 1846, and that he found him still living on the land when he returned from the war in 1848. Mrs. Creely also testifies that she visited the land frequently when Thomas, junior, resided on it in 1849.

McPherson produced no testimony, either before the land officer or at the trial, conflicting with this. His testimony was limited to showing that Chartrand voted in Carondelet and was a member of the council and generally resided there, but even his witness, Barada, admits

that he resided out of town part of the time; and justice Levant, and Michael Chartrand, who was register of the town, both say, that being an old inhabitant, his residence outside of the town did not prevent his voting and being a member of the council. Hence the fact that Chartrand actually resided on the land, and that two of his children were born on the place four months prior to June, 1838, and that he continued to occupy and cultivate in person or by tenant up to that time, which satisfies the law, is not controverted; nor is it controverted that he continued to claim ownership till his death, and to hold possession by his tenants, or that his son, after that event, took possession, built a new house there and resided in it till 1849, and was succeeded by his brothers. There was, therefore, conclusive proof of the residence required both under the law of 1838 and under that of 1841.

(3) *And proof of these facts was offered to the land office both by the father and by the son* for the purpose of claiming the right of pre-emption which the law gave on such proof, and the officers refused to receive it. The father's offer is shown by the testimony of Michael and of Levant; the first of whom swears that he accompanied his father and his witnesses, whose names are given, to the office for the purpose of making the proof, and both of whom swear that they saw in the father's possession an official certificate relating to his claim of pre-emption. This proof is all the more reliable because of its obvious deficiency. Michael does not profess to have been in the presence of the officers when the offer was made, as he would have done if his story had been made up; and neither he nor Levant undertakes to say what the purport of the certificate was which they both saw in the possession of the elder Chartrand. But when the fact is established that Chartrand went to the land office to prove up his right of pre-emption—which, although he himself and all the witnesses he then took with him are long since

numbered among the dead, his representatives were still able to establish, at the trial of this case thirty years afterwards—the record proof that the land was then withheld from entry shows what the certificate given him must have been.

After such a lapse of time, occasioned for the most part by the obtructions put in the way of poor and ignorant people by the plaintiff, and with no laches imputable to them, stronger proof could not reasonably be required.

(4) But whilst the offer of the elder Chartrand is well substantiated, it is not essential to the case to establish it. As the land was never offered for sale, his right was never barred. The act of 1841 came in force before the law of 1830 expired in 1842, and the declaration of the son, filed prior to McPherson's location, was in time to protect the right.—(Johnson vs. Towsley, 13 Wall., 72.)

All the witnesses concur that the son entered into possession in virtue of his father's right, and made his application to assert it for the benefit of his father's heirs.

This fact is also established by McPherson's deed to him. The record also shows that this offer was refused by the officers, and the proof shows that it was again refused when renewed in 1849, within a few months before McPherson was allowed to locate the land, and again renewed and again refused in 1850, shortly after the location. The 2d section of the act of 1843 authorized the son "to file the necessary papers to complete" the father's right, which was saved and validated by the act of 3d March, 1853. That act provided "that any settler who has or may hereafter settle on lands heretofore reserved on account of claims under French, Spanish, or other grants, which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act and the act of the 4th of September, 1841, entitled, &c., after the lands shall have been released from reservation, in the same manner as if no reservation existed."—(10 Stat., p. 244.)

The reservation was not released till the decision of this court against Carondelet.—(1 Black, 189.) The decision of the department was not final, because the act of 1812 was a complete grant with respect to the north part of the commons, where the boundary was defined. Hence, in making his decision, which, if favorable to Carondelet, would have concluded the United States, the commissioner says, he considers the question "settled so far as executive action is concerned," referring the claimant to the courts for the final disposition of the question, which left the reservation standing till the decision against Carondelet by this court.

ADMISSIBILITY OF CHARTRAND'S TESTIMONY.

The only question of law which arose in the proceedings before the Land Department was on the admissibility of Michael Chartrand's testimony. He was objected to as a witness before the local officers, (p. 36,) on the ground that he was interested. But he swears that he was not, and that he had conveyed all his interest by quit-claim deed, and the bill (p. 6) exhibits his and his brother's deeds of the same character for all their interests, without making any question upon their validity, and no proof was offered or point made in relation to them at any stage of the case, and Michael's testimony was received at the trial without objection.—(p. 113.)

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